No. 2377

United States
Circuit Court of Appeals
For the Ninth Circuit.

MANHATTAN CANNING COMPANY, a Corporation,

Appellant,

vs.

J. W. WILSON,

Appellee.

Apostles.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filmer Bros. Co. Print. 330 Jackson St., S. F., Cal.

No. 2377

United States
Circuit Court of Appeals
For the Ninth Circuit.

MANHATTAN CANNING COMPANY, a Corporation,

Appellant,

vs.

J. W. WILSON,

Appellee.

Apostles.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

Index. Page

Index. Page

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Names and Addresses of Counsel.

JAMES KIEFER, Esquire, 654 Colman Building, Seattle, Washington,

Proctor for Libelant and Appellee.

CHARLES W. DORR, Esquire, 375 Colman Building, Seattle, Washington;

HIRAM E. HADLEY, Esquire, 375 Colman Building, Seattle, Washington;

CLYDE M. HADLEY, Esquire, 375 Colman Building, Seattle, Washington;

FREDERICK W. DORR, Esquire, 375 Colman Building, Seattle, Washington;

Proctors for Respondent and Appellant.

[1*]

*Page-number appearing at foot of page of original certified Record.

TITLE OF CAUSE:

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Statement [of Clerk U. S. District Court].

NATURE OF ACTION:

Libel *in personam* for wages, maintenance and expenses of cure.

DATE OF COMMENCEMENT OF THE ACTION:

Libel filed May 16, 1913.

Citation served May 19, 1913.

NAMES OF PARTIES:

James Wilson, libelant and appellee.

Manhattan Canning Company, a corporation, respondent and appellant.

DATES OF FILING PLEADINGS:

Libel: May 16, 1913.

Answer and exceptions of respondent: May 27th, 1913.

Amended answer of respondent: July 7th, 1913.

Exceptions to amended answer: July 11, 1913.

[2]

REFERENCE:

Referred to A. C. Bowman, United States Commissioner, to take testimony and to make findings of fact and conclusions of law. Result of reference, findings in favor of libelant and against respondent in the sum of $520.00 and costs, which findings were confirmed by the Court over the exceptions of respondent.

FINAL DECREE:

Signed and filed: January 19, 1914.

NOTICE OF APPEAL:

Filed January 27th, 1914. **[3]**

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING CO.,

Respondent.

Libel in Admiralty for Wages, Maintenance and Expenses of Cure.

The libel of J. W. Wilson, late seaman on board the American brig "Harriet G.," whereof J. A. McInnis was master, against the Manhattan Packing Co., in a cause of wages and expenses, civil and maritime, alleges as follows:

I.

That the respondent, Manhattan Packing Co., is

Whereupon the libelant prays that a citation in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said Manhattan Packing Company; and that it may be required to appear and answer under the oath of its officers this libel and all and singular the matters aforesaid, and the interrogatories hereto attached; and that this Honorable Court would be pleased to decree the payment of the wages of the libelant for said voyage, the expenses of his cure and his maintenance during said period; and that he may have such other and further relief as in law and judgment he may be entitled to receive.

JAMES KIEFER,
Proctor for Libelant. [6]

Western District of Washington,
County of King,—ss.

J. W. Wilson, being first duly sworn, on oath deposes and says: That he is the libelant above named, has heard the foregoing libel read, knows the contents thereof and that the same is true.

J. W. WILSON.

Subscribed and sworn to before me this 16th day of May, 1913.

[Seal] JAMES KIEFER,
Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

[Indorsed]: Libel *in Personam.* Filed in the U. S. District Court, Western Dist. of Washington, May 16, 1913. Frank L. Crosby, Clerk. By ————, Deputy. [7]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING CO.,

Respondent.

Affidavit for Suit in Forma Pauperis.

Western District of Washington,
County of King,—ss.

J. W. Wilson, being first duly sworn on oath, according to law, says: That he is the libelant above named; that he is an American citizen, and a seaman, and a resident of the Western District of Washington; that he has fully and fairly stated the facts upon which he sues in this cause, as set out in his libel by his proctor, James Kiefer; that he is advised by his said proctor that he has a meritorious cause of action.

Affiant further says that he is unable, for want of means, to give security for costs, or to advance costs, and therefore prays to be admitted to prosecute this action without the payment of costs and without giving security for costs.

J. W. WILSON.

Subscribed and sworn to before me this 16th day of May, 1913.

[Seal] JAMES KIEFER,

Notary Public in and for the State of Washington, Residing at Seattle. [8]

[Order Granting Libelant Leave to Begin Action in Forma Pauperis, etc.]

On reading the foregoing affidavit it is by the Court ordered that the libelant have leave to begin his action *in forma pauperis,* and that process due issue *in personam* returnable according to rule May 29th, 1913.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Filed in the U. S. District Court, Western Dist. of Washington, May 16, 1913. Frank L. Crosby, Clerk. By ————, Deputy. [9]

In the District Court of the United States, in and for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY,

Respondent.

Exceptions and Answer of Respondent to Libel.

To the Honorable EDWARD E. CUSHMAN, Judge of the District Court of the United States, for the Western District of Washington, Sitting in Admiralty:

The Manhattan Canning Company, by its proctors, Dorr & Hadley, excepts to the libel filed in this cause:

First: Because from the allegations of the libel it appears that libelant's employment ceased before the commencement of the voyage, and that libelant is therefore not entitled to the relief claimed, to wit, wages for the entire voyage, nor is libelant entitled to wages under the allegation of the libel for any period to exceed one month.

And further answering the libel, respondent alleges as follows:

I.

That the allegations of the first article of the libel are true, except as to the name of respondent, whose true name is the Manhattan Canning Company. [10]

II.

That respondent has not sufficient knowledge or information to form a belief as to the truth or falsity of the third, fourth, and fifth articles of the libel, and therefore denies the same.

III.

Referring to the sixth article of the libel respondent admits that said brig "Harriet G." has departed for Alaska, with a cook other than libelant, and as to

each and every other allegation in said sixth article contained, respondent alleges that it has neither information nor knowledge sufficient to form a belief as to the truth or falsity of said allegations, and therefore denies the same.

WHEREFORE the respondent prays that the Court will pronounce against said libel and dismiss the same with costs.

DORR & HADLEY,
Proctors for Respondent.

State of Washington,
County of King,—ss.

S. Harrington, of said county and State, being first duly sworn, on his oath deposes and says: That he is an officer, to wit, secretary of the respondent corporation Manhattan Canning Company in the above-entitled action, and makes this affidavit as such officer for said respondent; that he has read the foregoing answer, knows the contents thereof, and that the statements and allegations therein contained are true, as he verily believes.

S. HARRINGTON.

Subscribed and sworn to before me this 26th day of May, A. D. 1913.

[Seal] CLYDE M. HADLEY,
Notary Public in and for the State of Washington,
Residing at Seattle. [11]

Service of the within Answer is accepted and receipt of copy admitted this —— day of May.

JAMES KIEFER,
Attorney for Libelant.

[Indorsed]: Exceptions and Answer of Respondent to Libel. Filed in the U. S. District Court, Western Dist. of Washington. May 27, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [12]

[Decision on Exceptions to Libel.]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Filed June 19, 1913.

JAMES KIEFER, for Libelant.

DORR & HADLEY, for Respondent.

CUSHMAN, District Judge.

This cause is for decision upon the exceptions of the respondent to the libel, which is one for wages, maintenance and expenses of cure.

On the 21st of April, 1913, libelant shipped as cook on the brig "Harriet G.," at Seattle—its home port—for a voyage of six months duration to Port Heiden, in Alaska, the agreed wages being eighty dollars per month. He began the discharge of his employment the same day, continuing therein until the 23d day of April, 1913, when, at Seattle, while the vessel was being towed from the dock to anchorage, libelant fell

from the companionway leading from the poop deck to the main deck—alleged to be without fault on his part, and, in falling, struck a pile upon the deck of the vessel, and received certain injuries rendering him unable to longer continue in the services of the ship, or perform his duties as cook.

At the direction of the master, he was removed from the vessel to a hospital in the city of Seattle, where it is [13] alleged he remained until the 5th day of May, 1913, incurring a hospital bill of Thirty & 60/100 Dollars, and a physician and surgeon's bill of Fifty Dollars. It is alleged that he is still sick and will be unable to work at his occupation, or at all, for six months, that his necessary expenses for maintenance ashore has been One and 50/100 Dollars per day; that he will require further medical attendance which he estimates at Fifty Dollars; that the vessel has left the port of Seattle for Port Heiden, and that there is no system of communication between Seattle and the port of Heiden, by which libelant could rejoin said vessel should he recover.

The libel is excepted to upon the ground that, in any event, libelant—under section 4527 R. S., 6 Fed. Stat. Ann., p. 864—is only entitled to one month's wages in addition to those already earned at the time of his leaving the vessel. This section provides:

> "Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault, on his part justifying such discharge, and without his consent, shall be entitled to receive from the master

or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

If this section includes cases other than those of wrongful discharge, it is inapplicable to a coastwise voyage of the nature of the one set up in the libel. The above section was one of those in the shipping commission act of June 7, 1872, Chapter 327, 17 Stat. L., 262; and was, so far as the voyage here in question is concerned, repealed by the Act of June 9, 1874, 18 Stat. L., 64; vol. 6 Fed. Stat. Ann. 850, which later act provides:

"That none of the provisions of an act entitled 'An act to authorize the appointment of shipping commissioners by the several Circuit Courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen' shall apply to sail or steam vessels engaged in the coastwise trade, except the coastwise trade between the Atlantic and Pacific [14] coasts, or in the lake--going trade touching at foreign ports or otherwise, or in the trade between the United States and the British North American possessions, or in any case where the seamen are by custom or agree-

ment entitled to participate in the profits or result of a cruise, or voyage."

Dary vs. The Caroline Miller, 36 Fed. 507.

This appeal is still effective, as, so far as the section relied upon by respondent is concerned, there has been no re-enactment.

Under the maritime law, the libelant would be entitled to the expenses of his cure and maintenance while injured, together with his wages for the voyage.

W. L. White, 25 Fed. 503;
The Robert C. McQuillen, 91 Fed. 688;
Olson vs. Whitney, 109 Fed. 80;
The Bunker Hill, 198 Fed. 587;
Peterson vs. Chandos & Master, 4 Fed. 645;
Highland vs. Harriet C. Kerlin, 41 Fed. 222.

The question whether libelant would be entitled to recover, on the showing in his libel, the wages prior to the expiration of the six months for which he shipped, was not argued upon the exceptions, nor considered.

The exceptions are overruled.

[Indorsed]: Decision on Exceptions to Libel. Filed in the U. S. District Court, Western Dist. of Washington. June 19, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [15]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Amended Answer.

Comes now the Manhattan Canning Company, respondent in the above-entitled libel, and by stipulation of counsel for libelant and respondent files this its amended answer to the libel of James Wilson, in a cause of wages, civil and maritime, and alleges as follows:

I.

That the allegations of the first article of the libel are true, except as to the name of respondent, whose true name is the "Manhattan Canning Company."

II.

That respondent denies each and every allegation contained in the second, third, fourth and fifth articles of the said libel. [16]

III.

Referring to the sixth article of said libel, respondent admits that said brig "Harriet G." has departed for Alaska, with a cook other than libelant; and as to each and every other allegation in said sixth article

contained, respondent alleges that it has neither information nor knowledge sufficient to form a belief as to the truth or falsity of said allegations, and therefore denies the same.

And for a further and first affirmative defense, respondent alleges:

I.

That the shipping articles signed by libelant for the voyage, described in the libel, expressly stated that the time of service should be from the date of sailing from, until return to Seattle, Washington.

II.

That the brig "Harriet G." sailed from Seattle, Washington, to Port Heiden, Alaska, on April 25, 1913, and that libelant's term of employment had not yet commenced at the time of the alleged injury, as stated in the libel.

And as a further and second affirmative defense, respondent alleges: [17]

I.

That in the shipping articles of the brig "Harriet G.," which libelant signed, as aforesaid, it was expressly stated that libelant was not to bring any intoxicating liquors on board, and that libelant was to conduct himself in a careful and sober manner; and these conditions were part of the consideration for the agreement of respondent to pay the wages to libelant.

II.

That libelant, in violation of said condition in the shipping articles, brought a quantity of intoxicating liquor on board, and that libelant drank a quantity

of intoxicating liquor, so that he was unable, while on board the said brig, prior to entering the service of respondent, or at all, to conduct himself in a careful and sober manner; and that libelant, during said time, wholly failed and neglected to conduct himself in a careful and sober manner.

Wherefore, the respondent prays that the Court will pronounce against said libel and dismiss the same with costs.

DORR & HADLEY,
Proctors for Respondent. [18]

State of Washington,
State of King,—ss.

S. Harrington, being first duly sworn, on his oath deposes and says: That he is an officer, to wit, secretary of the Manhattan Canning Company, the corporation named as respondent in the above-entitled action, and makes this affidavit on behalf of said corporation as such officer; that he has read the foregoing amended answer, knows the contents thereof, and that the statements and allegations therein contained are true, as he verily believes.

S. HARRINGTON.

Subscribed and sworn to before me this 7th day of July, A. D. 1913.

[Seal] FRED W. DORR,
Notary Public in and for the State of Washington,
Residing at Seattle.

Service of the within Amended Answer is accepted and receipt of copy admitted this 8th day of July, 1913.

JAMES KIEFER,
Attorney for Libelant.

[Indorsed]: Amended Answer. Filed in the U. S. District Court, Western Dist. of Washington. July 8, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [19]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Exceptions to Amended Answer.

Comes now the libelant by James Kiefer, his proctor, and excepts to the amended Answer filed herein on behalf of the respondent as follows:

I.

Libelant excepts to the first affirmative defense pleaded in said Answer upon the following grounds and for the reasons following:

1st: That said affirmative defense is insufficient.

2d: That the allegations of said affirmative defense are impertinent.

II.

Said libelant excepts to the second affirmative defense pleaded in the amended Answer upon the following grounds and for the following reasons:

1st: That said second affirmative defense is insufficient.

2d: That the allegations of said second affirmative defense are impertinent.

JAMES KIEFER,
Proctor for Libelant. [20]

Copy of within Exceptions received and service of same acknowledged this 11th day of July, 1913.

DORR & HADLEY,
Proctors for Defendant.

The office of the undersigned, 654–5–6 Colman Building, Seattle, Washington, is designated as the place at which service of all subsequent papers in this cause, except writs and process, may be made, and the undersigned hereby consents that service may be made at the said place of all subsequent papers, except writs and process.

JAMES KIEFER,
Attorney for Libelant.

[Indorsed]: Exceptions to Amended Answer. Filed in the United States District Court, Western District of Washington, July 11, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [21]

[Order Overruling Exceptions to Amended Answer.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

JAMES WILSON,

Libelant,

vs.

MANHATTAN CANNING CO.,

Defendant.

Now, on this day this cause comes on for hearing on Exceptions to Amended Answer, the libelant being represented by James Kiefer and the respondent by Messrs. Dorr & Hadley, and the Court after hearing argument of respective counsel overrules said exceptions.

Dated July 14, 1913.

Journal 3, page 183. **[22]**

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY,

Respondent.

Testimony Reported by U. S. Commissioner.

To the Hon. EDWARD E. CUSHMAN, Judge of the Above-entitled Court:

Pursuant to the stipulation hereto attached, the parties appeared before me on this 23d day of May, 1913, the libelant in person and by James Kiefer, Esq., his proctor, and the respondent by Mr. C. M. Hadley, one of its proctors. Thereupon the following proceedings were had and testimony offered:

Libelant's Testimony.

[Testimony of C. C. Young, for Libelant.]

C. C. YOUNG, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KIEFER.) Where do you live?

A. Seattle.

Q. What is your business? A. Bartender.

Q. Do you know Mr. Wilson here, the libelant?

A. Yes, sir.

Q. Did you see him on the 23d of April last?

A. I did.

Q. Where? [23]

A. Saw him on the waterfront aboard ship.

Q. Do you know what ship?

A. It was the "Harriet G."

Q. What time of day did you see him.

A. It was some time after dinner. I could not exactly state what time, but somewhere between 12 and 2 or half-past two, or three, somewhere along there.

Q. Some time after dinner? A. Yes, sir.

(Testimony of C. C. Young.)

Q. What was he doing there?

A. He just came out of the cook kitchen there, came on deck and he saw me standing there and spoke to me. He says, "I will be back in a minute," and he went down into the cabin.

Q. I will ask you what his condition was as to being drunk or sober.

A. Perfectly sober; I do not think he had had a drink or smell of it.

(No cross-examination.)

Testimony of witness closed. **[24]**

[Testimony of A. Altemose, for Libelant.]

A. ALTEMOSE, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KIEFER.) Do you know Mr. Wilson here, the libelant? A. Yes, sir.

Q. You live in the city here? A. Yes.

Q. What is your business? A. Carpenter.

Q. Were you down at the dock where the bark "Harriet G." lay on April 23? A. Yes, sir.

Q. Did you see Wilson, the libelant, there?

A. Yes, sir.

Q. About what time of day did you see him?

A. I could not tell just what time; some time after the noon hour.

Q. And what was he doing there?

A. He came out of the kitchen and walked back and spoke a few words to us. He said he would be back, and went into—I don't know what they call it—cabin, or whatever it was. He said he would be

(Testimony of A. Altemose.)

back in a few minutes, and that is the last I seen of him.

Q. You did not wait long enough for him to come back? A. No, sir.

Q. What was his condition—drunk or sober?

A. He seemed to me to be perfectly sober.

Q. You knew him before that time, didn't you?

A. Yes, sir.

Q. And had been acquainted with him for some time? A. Yes, sir. [25]

Q. If he had been drunk would you have noticed it? A. I would.

Cross-examination.

Q. (Mr. HADLEY.) You say this occurred as the boat lay alongside the dock?

A. Yes, the boat lay alongside the dock.

Q. And you were standing on the dock?

A. Standing on the rail of the dock.

Q. Was he aboard? A. Yes, sir.

Redirect Examination.

Q. (Mr. KIEFER.) How close were you to Wilson when you spoke to him?

A. Oh, about 12 feet. I was standing on the dock and he was on the boat. I was right on the rail on the side of the pier.

(Testimony of witness closed.) [26]

[Testimony of J. D. McDonald, for Libelant.]

J. D. McDONALD, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KIEFER.) Were you aboard the "Har-

(Testimony of J. D. McDonald.)

riet G." on April 23 last? A. Yes, sir.

Q. What were you doing on board of her, what employment?

A. I was watchman on there for a couple of weeks, that is, before that for a couple of weeks.

Q. Do you know the libelant here, J. W. Wilson?

A. Yes, he was cook on there for that length of time.

Q. And did you see him there the afternoon of the 23d of April? A. On the afternoon?

Q. Yes.

A. No, sir, not afternoon, but close to noon I left the ship. The ship was going away. I had settled up and left about 11 o'clock.

Q. You did not see him in the afternoon?

A. Not in the afternoon, because I was ashore.

Q. What was his condition as to being drunk or sober at the time you saw him last?

A. Oh, he was perfectly sober. He was about his work in the galley and on leaving there I came to bid him good-bye, etc.

Q. Now, will you describe the condition of the ship? Do you know the companionway that leads from the poop-deck down? A. Yes, sir, I do.

Q. Prior to the loading of the ship was there a step or steps near the aft of the companionway to come down? [27]

A. Yes, there was, built in when the ship was built, about five steps, five or six steps high from the main deck up to what is called the break of the poop.

(Testimony of J. D. McDonald.)

Q. Now, on the 23d of April were these steps still there?

A. No, sir, and they were taken away. There was a small deckload of some piling, that had the bark taken off. They were probably a foot high or so, and the steps were taken away from there altogether.

Cross-examination.

Q. (Mr. HADLEY.) Do you know when the steps were taken away?

A. Well, it must have been a day, perhaps before that, or a half a day. They just took them out to put the deckload on; it was not a deckload, only a small quantity.

Q. Do you mean the regular steps to the break of the poop were removed?

A. Yes, sir, removed, and some kind of a deckload, a small quantity of piling was put in there instead. The steps were in the way of the deckload; I suppose that is the reason that they took them away.

Q. How much of a drop would that make with the steps removed and the piling in place of them?

A. About three feet. About three feet from the poop down to this small deckload; you know from there down would be about three feet.

Q. (Mr. KIEFER.) From the poop to the top of the timbers? A. Yes, sir.

Q. (Mr. HADLEY.) And that was the condition when you left the boat? [28]

A. Yes. A few hours, I guess a couple of hours before the ship pulled out. I was watchman on her

(Testimony of J. D. McDonald.)

a couple of weeks and they paid me.

Q. What time did the ship pull out?

A. One or two, some place like that. I was not right there when the ship pulled out. I was on the wharf and saw her pass out, and met the captain and another man coming uptown; she was pulling off to the buoy.

Q. And what time did you say you saw the libelant last?

A. About 11 o'clock, near dinner; he was busy in the galley getting dinner ready for the rest of us, is all.

(Testimony of witness closed.) [29]

[Testimony of Mathew Murry, for Libelant.]

MATHEW MURRY, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KIEFER.) Mr. Murry, you live here in Seattle? A. Yes, sir.

Q. What is your business? A. Chauffeur.

Q. Driving a taxicab? A. Yes, sir.

Q. Were you doing that on the 23d of April last?

A. Yes, sir.

Q. Did you see this man Wilson here, the libelant, on that day? A. Yes, sir.

Q. Did you drive him anywhere that day?

A. Took him from the Lillico dock to Providence Hospital.

Q. What was his condition, what did he appear to be suffering from? A. Dislocated shoulder.

Q. Did you observe his condition as to being drunk or sober?

(Testimony of Mathew Murry.)

A. It appeared to me that the man was in great pain; he did not seem to be drunk, to my observation.

Q. Would you say that he was sober?

A. Perfectly.

Q. About what time of day was that?

A. It was somewhere around six o'clock. I could not say exactly, but somewhere around six o'clock in the evening.

Cross-examination.

Q. (Mr. HADLEY.) When you left him at the hospital, were [30] you of the same impression as to his condition? A. Yes, sir.

(Testimony of witness closed.)

Hearing adjourned. [31]

Seattle, Washington, June 20, 1913.

PRESENT: Mr. KIEFER, for the Libelant.
Mr. DORR, for the Claimant.

Mr. KIEFER.—I offer the depositions heretofore taken in this case under stipulation.

[Deposition of Mr. Roy Lillico, for Libelant.]

Mr. ROY LILLICO, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KIEFER.) You may state your business.

A. Tow-boats.

Q. You operate a launch here in Seattle harbor?

A. Yes, sir.

Q. State whether or not you brought a man from the "Harriet G.," the bark "Harriet G.," anchored in the harbor at that time, on the 23d of April last.

A. Yes, I brought a man ashore.

(Deposition of Roy Lillico.)

Q. About what time of day was it?

A. Some time in the afternoon—I should judge about two or three o'clock.

Q. Do you know the man's name?

A. No, I do not know the man's name.

Q. Is this the man, the libelant here?

A. Yes, sir.

Q. What was his condition at that time?

A. Why, they told me that the man was hurt—the mate told me the man was hurt and they wanted to send him ashore.

Q. The mate of the "Harriet G."?

A. Yes, one of the mates, I don't know whether the second or first mate. So I took him aboard; he got over the [32] side and down into the pilot-house, with the help of one of the other men.

Q. Did the mate come ashore with him?

A. Well, I would not say about that.

Q. You could not say whether he did or not?

A. I would not say whether the mate or not, but a couple of men came ashore with him.

Q. From the "Harriet G."? A. Yes, sir.

Q. Do you know what was done with him when he got ashore? A. No, I do not.

Q. You did not see him taken any further than your launch?

A. No, he stayed aboard there, and I went ashore on the dock.

Q. What was the condition of this injured man—did he appear to be injured?

(Deposition of Roy Lillico.)

A. Why, he said he was; he had his coat thrown over his shoulder.

Q. Now, what was his condition at that time as to being drunk or sober?

A. He might have had a drink or two, but I do not think he was what you would call drunk.

Q. You would not say he was drunk?

A. No. He might have had a drink or two.

Cross-examination.

Q. (Mr. DORR.) What time in the day was this, Mr. Lillico, as near as you can fix the time?

A. I think it was in the afternoon between two and four.

Q. Somewhere there. [33]

A. It might have been five o'clock.

Q. Some time in the latter part of the afternoon?

A. Yes.

Q. Were you in charge of the boat?

A. Yes, sir.

Q. In the pilot-house? A. Yes, sir.

Q. This man was in the pilot-house with you?

A. He came ashore with me; he was in the wheel-house.

Q. The same place you were? A. Yes, sir.

Q. Why do you say he might have had a drink or two—was there anything to suggest that to you?

A. Well, it might have been, as I have seen a great number of men that had a drink or two; that is the way I express it. It might have been that he was hurt; his face was a little flushed, which might have been from the accident that he had had.

(Deposition of Roy Lillico.)

Q. You do not know anything about the accident except what some one told you about it? A. No.

Q. You do not know anything about it personally?

A. No, I don't know where he got hurt.

Q. Where was the "Harriet G." lying?

A. She was at the buoy, just lying up to the buoy.

Q. Out in the stream?

A. Yes, sir. She hadn't made fast yet.

Q. So that she had just moved out there?

A. Yes, sir.

Q. Did you move her out? [34] A. No.

Q. Were you sent out there to get this man, or did you just casually drop out there?

A. No; I think there were one or two men I took out there, but I was going out to a barge out in the bay with some men, and as I went alongside the "Harriet G." the mate told me to come alongside, that he had a man there to send ashore; I think it was the mate—it was one of the mates, first or second, I don't know which.

Q. Do you know whether anyone else came in with him or not?

A. There were two other men came in.

Q. Off the boat? A. Yes, sir.

Q. Do you know who they were?

A. No. They just came ashore to buy something. Something like that.

Q. In order to take care of him?

A. No; he sat in the wheel-house himself coming in.

Q. What did you do, if anything, after you got in?

(Deposition of Roy Lillico.)

A. I left the boat and left this man sitting in the wheel-house.

Q. And do not know what became of him after that? A. No, I do not.

Redirect Examination.

Q. (Mr. KIEFER.) One of these men might have been one of the mates, for all you know?

A. I do not know, it might have been. I know they said they were coming ashore to buy some stuff before they [35] went to sea.

Q. Now Captain, speaking of Wilson's condition at that time, you say he was not drunk. Was he able to handle himself and take care of himself?

A. Yes, he got into the wheel-house himself.

Q. Without assistance?

A. Yes. Of course he had to be assisted over the side of the boat, because there was no ladder or gangway out there.

Q. There was nothing in his manner of handling himself to suggest intoxication?

A. No, I would not say that there was.

Q. (Mr. DORR.) He did not have to be assisted over the side any more than anybody would that was getting on the boat?

A. No, I don't think so. Of course he is a pretty heavy man to put over the ship's side into the launch, and not have assistance.

Q. About the same as any other heavy man?

A. That is all.

Q. (Mr. KIEFER.) Did he seem to be able to use his right arm?

(Deposition of Mark Leroy Kenyon.)

Q. What was the occasion of your being down there?

A. He was to take a dog of mine up to the Arctic on this boat.

Q. And you were down there to see him?

A. I was going down to see if the dog was going. The captain seemed to be dissatisfied with the *dock* and put him ashore just before the boat sailed, and I went down to see whether he was on board or not.

Q. You were close enough so that you could see on the [38] boat and look right down on the deck, were you? A. Yes, sir.

(Testimony of witness closed.) [39]

[Deposition of J. W. Wilson, in His Own Behalf.]

J. W. WILSON, the libelant, being duly sworn, testified in his own behalf as follows:

(Mr. KIEFER.) You are the libelant in this case?

A. Yes, sir.

Q. What is your business?

A. My business is cooking.

Q. Marine cook? A. Marine cook.

Q. How old a man are you? A. Fifty-nine.

Q. How long have you been following the occupation of marine cook?

A. Off and on for twenty-five years.

Q. Now, you shipped on the "Harriet G." on the 21st of April? A. Yes, sir.

Q. And what was your rate of wages?

A. Eighty dollars.

Q. For how long a voyage?

(Deposition of J. W. Wilson.)

A. Six months.

Q. To Port Hayden, Alaska?

A. Yes, and back to Seattle.

Q. Did you go to work on that day, on the 21st?

A. I worked four or five days before I signed, five or six days before I signed.

Q. Now, then, after you signed on you went to work? A. I was working then.

Q. You remained at the pier until when?

A. We left the pier between two and three o'clock, I believe. [40]

Q. On what day? A. On the 23d of April.

Q. On leaving the pier what happened to you?

A. There was a crowd of people on the dock. I was busy getting the men's supper so that they could go ashore in time, as I had to get it before we went to the buoy. I had just gone aboard and cleaned the dinner dishes up and I came out to the aft companionway to go down on the main deck, and she had a couple of poles, pilings and they were all slippery and I caught hold of a rope—there were no steps there, the steps had been taken away—I did not pay much attention—and down I went, and dislocated my left arm, my shoulder. As soon as I fell I told McDonald, told him my shoulder is out, that I had fallen. He says, "Yes, you got it badly bent," and so the second mate and he signed as boatswain, acted as second mate, and he says to him, "You take the steward ashore; take him to the hospital." So when this gasoline launch came, Captain Lillico, I was helped aboard the gasoline launch by the second mate.

(Deposition of J. W. Wilson.)

I went to the pilot-house and sat there until the second mate got a taxicab and took me to Providence Hospital.

Q. The second mate came ashore with you?

A. Yes. He went as far as the hospital and then he went back aboard the ship again.

Q. How long did you remain in the hospital?

A. I was pretty close on to two weeks,—I think 12 days, something like that.

Q. Now, did you have any bruises besides the dislocation of the left shoulder? [41]

A. The dislocation of my shoulder.

Q. Any other bruises besides that?

A. My side was a little scratched—that happened about two weeks before that, I slipped on the drydock.

Q. In this fall did you receive any other injuries besides that left shoulder?

A. No, sir, just the left shoulder, sir.

Q. And have you been able to work since?

A. No, sir.

Q. Are you able to work now?

A. No, sir. I can lift my arm up that way that far, but not up to my head, this way. I cannot lift it this way. Every time I move my shoulder it hurts.

Q. It is sore yet? A. Yes, sir.

Q. Does it pain you? A. Sometimes.

Q. How much of a bill did the hospital present you?

A. I believe sixty dollars. You have the bill.

(Deposition of J. W. Wilson.)

Q. Is this the bill presented to you by the hospital?

A. Yes, sir. And fifty dollars for the doctor bill.

Mr. KIEFER.—I offer this bill in evidence.

Paper marked Libelant's Exhibit "A," filed and returned herewith.

Q. What doctor attended you?

A. Dr. Godfrey.

Q. Mr. Wilson, at the time when you had this fall, what was your condition, were you drunk or sober?

A. Perfectly sober the same as I am now.

Q. Had you had anything to drink that day? [42]

A. No, sir.

Q. Now, after this injury did any of the ship's officers or any one on board the ship give you a drink of liquor? A. No, sir.

Q. After the injury?

A. I got a drink of whisky when I got ashore. I don't know where the second mate got it. It was just a little in a glass; he must have got it in a saloon.

Q. He gave you that on coming ashore?

A. Yes, sir.

Q. Now, since being sent off the vessel, have you been obliged to maintain yourself at your own expense?

A. Yes, I had nobody else to help. Nobody from the office came near the hospital, or the captain or nobody. They left me there destitute.

Q. About what is the expense of maintaining yourself on shore?

(Deposition of J. W. Wilson.)

A. It costs about two dollars a day to live on shore.

Cross-examination.

Q. (Mr. DORR.) Just describe a little more in detail, Mr. Wilson, how this accident occurred there, were you coming out of the cabin?

A. I came out of the cabin, I was going forward. Some people on the dock said, "Good-bye, Jack," and I says, "Good-bye." And I was just going to take a step down from the break of the poop, and there was no steps where the steps used to be, they were carried away ten or fifteen feet away from it, and there was slippery pilings underneath there where the steps ought to have [43] been; they were not covered with a board. When I seen myself falling I grabbed a rope with my left hand, and I stretched around and it gave my shoulder a wrench. I was going forward to the galley to finish supper.

Q. Your left shoulder was the one that was dislocated? A. Yes, sir.

Q. And was dislocated by grabbing hold of this rope? A. Yes, to prevent myself from falling.

Q. You did not fall down?

A. I did when my hand slipped, I could not hold my weight as I weigh pretty close to 300 pounds.

Q. How long had these steps been taken away?

A. The mate took them away that morning, I believe in putting the deadload on. I went around on the other side of the vessel when they were putting it on and working on that side.

Q. How high was it up there?

(Deposition of J. W. Wilson.)

A. Well, where the steps were it must have been about four feet. It comes to me about here. (Showing.)

Q. You had to go down on steps there where the stairs were? A. Yes, sir.

Q. You went down that four foot drop?

A. I did not drop that much. There must have been about a foot of deckload there. I dropped on top of the pilings.

Q. You tried to stop yourself by grabbing this rope, and that threw your shoulder out?

A. Yes, sir. [44]

Q. Now, you saw Mr. Kenyon there, did you?

A. Yes, sir.

Q. And were talking to him?

A. He says, "How are you?" I says, "All right; I am fine." He says, "How is the dog?" and I says, "The dog is ashore."

Q. Did you hear him testify here a moment ago,—were you here? A. Yes, sir.

Q. Did you hear him say that he was talking to you and you walked off and walked up the companionway?

A. That is before I hurt myself. That was before that. I went back to the cabin again.

Q. How did you walk back and walk up the companionway?

A. I was on the break of the poop, I was not on the main deck. I was in front of the cabin door, in front of the companionway.

Q. That is the same stairs, is it not?

(Deposition of J. W. Wilson.)

A. Oh, no. There is a four foot drop; there is another step running into the cabin. Here is the break of the poop and the stairs coming to the main deck; and these go into the cabin. I was standing on this break of the poop in front of the cabin door, in front of the companionway.

Q. He testified here that he saw you walk aft, walk up the companionway into the cabin?

A. He saw me coming aft from the companionway; that is what he testified.

Q. Now, you went to the hospital with the second mate? A. Yes, sir.

Q. Providence Hospital? [45] A. Yes, sir.

Q. Did you go in the Marine Hospital ward there?

A. I went where they took me, and the second mate took me there, and one of the sisters spoke to him and they got me in the elevator.

Q. Did they know you were a marine?

A. I told the doctor. He asked how I came there and I told the doctor what ship I came from and also told the sisters.

Q. Why didn't you go to the Marine Hospital?

A. I had to stay where they put me.

Q. You had a right to go to the Marine Hospital?

A. I stayed where they put me. I could not run from one place to another in the hospital. I stayed where they put me.

Q. Now, had you had anything to drink that day?

A. No, sir.

Q. You are not a drinking man?

A. No, sir, I never drink when I am working. I

(Deposition of J. W. Wilson.)

may take a glass of beer when ashore.

Q. Did you take liquor aboard?

A. What liquor I had the captain got.

Q. Do you know how much it was?

A. It was a case; never opened; he had it in his charge.

Q. Is it not a fact you took a case of whisky aboard?

A. The captain has got that, and the shipping commissioner knows it, and the captain had it under lock and key.

Q. Was it for your personal use?

A. No; it is to give to the fishermen when they get wet or something like that. [46]

Q. Was not that your personal property?

A. That was my property; yes.

Q. The case of whisky?

A. Yes, sir, with the captain's permission. And the captain took charge of it as soon as it came aboard.

Q. And the only drink you had that day was when you went ashore?

A. After I got ashore on the dock.

Q. Have you made any effort to get work since the accident?

A. No, sir. I could not do nothing. I could hardly button my pants in the back with this hand.

Q. You haven't done anything? A. No, sir.

Q. What has been the expense of that doctor bill?

A. Fifty dollars.

Q. Are you consulting a doctor at present?

(Deposition of J. W. Wilson.)

A. I saw him the other day and told him to come up here and he said he would. I haven't seen him since.

Q. He attended you while you were in the hospital?

A. Yes, sir. He had me under the X-ray to look at my shoulder.

Q. When did this injury occur, Mr. Wilson, with reference to the time the vessel started out?

A. It must have been between two and three o'clock, when the vessel pulled out. It might have been later. After I got my dinner dishes washed and had my supper on ready to dish out for the men to get ashore right early after they got to the buoy.

Q. This happened after you got away from the dock?

A. We were going out in the stream, we were just past the [47] end of the dock.

Q. Just after they cast off? A. Yes, sir.

Redirect Examination.

Q. (Mr. KIEFER.) You know from experience, do you, that they will not receive a patient in the Marine Hospital ward without a certificate from the master of the vessel? A. I know they do not.

Q. You know that to be a fact?

A. Yes, sir. The second mate took me and spoke to one of the sisters; and they sent me up stairs to the 5th floor.

Q. Now, Mr. Wilson, counsel has asked you whether you had done any work since the injury. Are you at present able to work at your occupation?

(Deposition of J. W. Wilson.)

A. No, sir; pretty hard with one hand to do cooking on board ship, handling big pots, lifting twenty gallon pots.

Q. A man has to use both arms?

A. Yes, sir, he has to use both arms.

Q. (Mr. DORR.) Have you paid any of these amounts that you are claiming in this libel?

A. I haven't paid nothing, sir. Haven't had no money to pay.

Q. These items that you claim in regard to the $50 doctor bill and the $30.60 hospital bills are on the statement that has been introduced in evidence? [48]

A. Yes, sir.

(Testimony of witness closed.)

Hearing adjourned until June 25, 1913, at 10:00 A. M. [49]

July 20, 1913.

Claimant's Testimony.

Proctor for respondent offers in evidence the shipping articles of the Bg. "Harriet G." certified by the shipping commissioner, for the voyage beginning April 21, 1913.

Articles marked Respondent's Exhibit "A," filed and returned herewith. [50]

Seattle, Washington, October 8, 1913.

PRESENT: Mr. KIEFER, for the Libelant.
Mr. DORR, for the Respondent.

[Testimony of Capt. J. A. McInnis, for Respondent.]

Capt. J. A. McINNIS, a witness called on behalf of the respondent, being duly sworn, testified as follows:

(Testimony of Capt. J. A. McInnis.)

Q. (Mr. DORR.) You are captain of the bark "Harriet G."? A. Yes, sir.

Q. And were you at the time the accident was supposed to have happened to the cook—you were in command at that time? A. Yes, sir.

Q. State what you know about the accident.

A. All that afternoon this Mr. Wilson he had some friends down and they were intoxicated, had lots of it. The cook was supposed to be in the galley on duty, but he did not get any dinner for us that day.

Q. Now, was the vessel at that time lying alongside the dock?

A. Lying alongside the dock that afternoon; we pulled away from the dock that afternoon.

Q. After you pulled out in the stream, how long was it before Wilson was taken ashore?

A. I did not go out on the ship to the buoy; I left the ship at Pier 7. McDonald was first officer and he took the ship out. I was not aboard at the time of the accident.

Q. How long after the ship left the dock did she sail? A. The 23d, I think.

Q. Do you remember how many days it was after he was taken ashore, were you delayed any?

A. He was taken ashore that night that he got hurt. [51]

Q. Did you sail that night?

A. No. We did not sail until the 23d.

Q. I will ask you Captain if this is the log-book of the "Harriet G."? A. Yes, sir.

Q. That is the official log? A. Yes, sir.

(Testimony of Capt. J. A. McInnis.)

Q. Were these entries in there made by you, or under your direction? A. Made by me.

Q. Is there any entry in there concerning this accident? A. Yes, sir, this one here.

Q. On which page? A. On page 12.

Mr. DORR.—I offer in evidence the entry and ask that it be read into the record so that the log-book may be taken back aboard the ship by the captain.

Mr. KIEFER.—I object to that, on the ground that it is not sufficiently proven, and I want to cross-examine before it is offered.

Q. (Mr. KIEFER.) When was that entry made?

A. It was made on that date, the 21st, the day of the accident.

Q. Did you personally make that entry?

A. Yes, sir.

Q. When did you last see Wilson that day?

A. I have never seen Wilson since.

Q. When did you last see him on that day before the accident? A. I saw him that forenoon.

Q. About what time? [52]

A. About the time they pulled away from the dock, that would be in the afternoon.

Q. A moment ago you said in the forenoon. Now was it in the forenoon or afternoon?

A. It was afternoon that we pulled away from the dock.

Q. You said you were not aboard when she pulled away from the dock.

A. I was aboard but came ashore when they hauled her out to the buoy.

(Testimony of Capt. J. A. McInnis.)

Q. You left the ship before she hauled out?

A. Yes, sir, I was on the dock.

Q. Now, are you certain that Wilson was drunk?

A. Well, he was drunk, at the time that the boat was pulled out.

Q. He was. A. Yes, sir.

Q. Who cooked dinner that day?

A. Well, I did not get any dinner.

Q. Was dinner cooked and served on board the boat that day? A. Not to my knowledge.

Q. The noon meal, was there a noon meal served?

A. I did not get any.

Q. You do not know whether there was one served or not? A. Not to my knowledge.

Q. How many hands were aboard?

A. I could not say how many were aboard.

Q. About how many? You ought to know, as master.

A. Well, at that exact date I could not say how many, but I think there was at least—I would not say; I do not know how many, because we got some of the crew from shore [53] afterwards; some were longshoremen.

Q. You had at least a dozen men aboard that day?

A. Some were longshoremen.

Q. I mean aboard of the crew, you know longshoremen are not the crew. A. No.

Q. You had ten or a dozen of the crew aboard that morning? A. I would not say; I do not know.

Q. You were not there when he was hurt?

A. I did not see him get hurt; no, sir.

(Testimony of Capt. J. A. McInnis.)

Q. Never saw him since he was hurt?

A. Never saw him since.

Q. Now, in writing that entry of the log up about this matter you based it on information that you got from other people? A. No, sir.

Q. (Mr. DORR.) You know personally that he was drunk at that time, Captain?

A. He was drunk before that log was entered.

Q. Did he bring a quantity of liquor aboard or what did he do?

A. Well, to my knowledge he had a five gallon keg and a case, I supposed it was his.

Q. Did you take it away from him?

A. I took it away from him.

Q. (Mr. KIEFER.) What did you do with it?

A. I stowed it away.

Q. Took it away and locked it up at that time?

A. In my care.

Q. You took it away and put it where he could not get it? [54]

A. He could not get it.

Q. When did you do that?

A. I done that that same day.

Q. What time of day?

A. Well, I would not say what time of day; it was through the day in the forenoon.

Q. And you made no objection to his bringing it aboard? A. I did not see it come aboard at all.

Q. You knew he was going to bring it aboard?

A. No, sir.

Q. You and he were old acquaintances?

(Testimony of Capt. J. A. McInnis.)

A. No, sir.

Q. Had he never sailed with you before?

A. The first time I ever met the gentleman was on the Swiftsure Bank, on the light-ship. I met him there once.

Q. Don't you know that Wilson is not a drinking man?

A. Well, if he is not he changed. I never seen him drink before to my knowledge. I never met him many times before. But he certainly was intoxicated with liquor then.

Q. He could get about all right, could he not?

A. Well, I don't know how drunk he was; I would not say.

Q. You do not know whether he was not able to get about? A. Well, he could not walk, hardly.

Q. Could not walk? A. Hardly.

(Testimony of witness closed.) [55]

[Testimony of A. McDonald, for Respondent.]

A. McDONALD, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. DORR.) You were mate of the "Harriet G." at the time of this accident? A. Yes, sir.

Q. You have heard the testimony of the captain. Now, state what you know of your own knowledge about it, the condition of the cook and anything that happened there.

A. Well, I remember everything except the dates. I could not state the dates without looking it up in my log aboard.

Q. We have fixed the dates.

(Testimony of A. McDonald.)

A. We left the dock about three o'clock in the afternoon, as near as I can remember, and when we were halfways out to the buoy somebody sung out to me that Wilson had hurt himself. I went as soon as I could to have a look at him, and he said his shoulder was dislocated. I asked him how he got that, and he said he fell on the deckload, slipped. And there was a gas boat going by and I hailed her and he came alongside and we sent him ashore immediately.

Q. What do you know about his condition at that time?

A. Well, he was what you would call half drunk.

Q. He had been drinking?

A. Yes, he had been drinking all day.

Q. Now, you signed this statement in the log-book here, did you? A. Yes, sir.

Q. Do you know when that was made?

A. Well, it was made when the captain came aboard.

Q. The same day?

A. Yes, I reported to the captain. [56]

Q. It was made the same day?

A. I think so. As soon as I seen the captain I reported everything to him and he entered it in the log.

Cross-examination.

Q. (Mr. KIEFER.) Prior to the time that Wilson got hurt you did not notice his condition at all?

A. Yes, I did.

Q. He got dinner that day, didn't he? A. No.

Q. Did not the crew have anything to eat at noon?

(Testimony of A. McDonald.)

A. No.

Q. What?

A. Oh, they might have had coffee. Had a pot of coffee in the galley; he did not serve no table.

Q. He did not set any table? A. No.

Q. Things went on that day the same as they had the day before?

A. He was drunk the day before, too.

Q. You had the same meals?

A. We were getting our meals ashore.

Q. All of them? A. Yes.

Q. Did not he cook breakfast that morning?

A. No.

Q. Well, that was because he was not cooking anything; it was not because he was drunk; there was not anything being cooked aboard.

A. There was not?

Q. Yes. [57]

A. Well, there is quite a lot there yet.

Q. I mean on these days. There was not anything being cooked aboard during these days?

A. There was nothing cooked, but everything was ready to cook, but he did not cook it. I sent one man in to help him, thinking he would get some kind of a meal up for us that day, and some of the men were short of money, but he did not give it to them. I sent a man down to him beside the waiter; he had a regular waiter, and I sent an extra man down.

Q. You did not pay any attention to his condition that day until he was hurt, did you?

A. No, only I seen him slopping around.

(Testimony of A. McDonald.)

Q. He would walk all right?

A. Oh, he could waddle around some.

Q. You did not consider his condition serious at all until he was hurt?

A. No, I thought he would sober up after we got out at sea and took the whiskey away from him.

Q. He had not gotten any whiskey since early that forenoon? You knew the captain took the whiskey away from him that morning, don't you?

A. No, I don't know that he did, but he had whiskey in the galley; he had whiskey when he got hurt.

Q. You gave him some after he got hurt?

A. I did not.

Q. Somebody else gave him some after he got hurt? A. I do not know.

(Witness excused from the stand.) [58]

[Testimony of A. Walters, for Respondent.]

A. WALTERS, a witness called on behalf of the respondent, being duly sworn, testified as follows:

Q. (Mr. DORR.) You were a seaman on the "Harriet G." at the time of this accident?

A. Yes, sir.

Q. State what you know about it.

A. Well, I do not know a great deal, only at the time I was on the forecastle-head handling the lines, doing work that had to be done, and after they left the dock and got away out I was going aft for some purpose, I was working, seeing that the lines were hauled in and saw him, and I heard a commotion at the galley and I thought I would go and see and I asked him what was the matter and he said he had

(Testimony of A. Walters.)

dislocated his shoulder. He was crying around and hollering and yelling and I looked in the galley door and asked what was the matter, and he said he had dislocated his shoulder, and he was hollering and he was in great pain, it seemed. So I could not stay there. We got out to the buoy and made fast and as soon as a launch could be secured he was sent ashore.

Q. Now, what do you know about his condition, whether he was drunk or sober?

A. Whether he had liquor aboard or not I could not say, because I did not live aboard until that day, I was living ashore until that day that we signed on and moved aboard. But I know, of course, that he was somewhat under the influence of liquor, that I could notice on the man. But as far as cooking, I did not eat aboard until supper time. Then the mess boy put up some kind of a meal for us for supper. I did not eat nothing aboard before that, we were supposed [59] to have dinner, but there was no dinner served at that time.

Q. Had he had anything to drink so that it was noticeable?

A. Well, it seemed so, of course, the way the man acted it seemed most probable that he had some drinks. I did not see any liquor.

Q. You signed this statement in the log?

A. Yes, sir.

Q. That is your signature to the log?

A. Yes, sir.

Q. And that is the truth, as stated in the log here, is it? A. Yes, sir.

(Testimony of A. Walters.)

Cross-examination.

Q. (Mr. KIEFER.) Mr. Walters, did you notice anything peculiar about his condition before he was hurt?

A. That he was jolly, that was all, and waving at people, I understand, at the time the accident happened, I did not see it, that is what I was told, he was waving at the people.

Q. Had you seen him around the ship before the accident happened? A. Yes, sir.

Q. And you had not noticed his condition, his condition had not attracted your attention at all?

A. No.

Q. He got around all right?

A. Well, as far as that goes; he was in the galley whenever I saw him. [60]

Q. In there at work?

A. Well, whatever work he had, he did not cook nothing for us, so I do not know what he was doing, to tell the truth.

Q. You saw him around the ship before the accident? A. Yes, sir.

Q. His condition was not such as to attract the attention, was it? A. Not until we were out.

Q. Not until he was hurt? A. Yes.

Redirect Examination.

Q. (Mr. DORR.) Do you mean to say you did not notice that he was drunk?

A. I told you when I seen him, when we went out, he was acting as a man that might have had some

(Testimony of A. Walters.)

liquor; he was waving and hollering; that is all I seen.

Q. That was before the accident?

A. That was as we were leaving the dock before that I did not pay much attention, I was at my work. I did not eat aboard, I did not know nothing about the man.

Mr. DORR.—I desire to read page 12 of the log-book of the "Harriet G.," under date of April 23, 4 P. M. Under the heading occurrences: "Hauled out from pier 7 in tow of tug 'Mystic.' As the vessel was clear of the wharf, J. J. Wilson, the ship's cook, fell on deck and claimed to be hurt seriously. He was sent ashore to the hospital at his own request. At the time he fell he was drunk. Witnesses: Alex. McDonald, Mate. [61] James Muir, seaman. ——— Downie, seaman. A. Walters, seaman."

Mr. KIEFER.—I desire it noted in the record that the log shows an extremely clean condition and the fact that there is no further entry in it, that is the only entry in this log.

Q. (Mr. KIEFER.) Captain Innis, are these all the entries required by law to be made by you?

A. The log-book aboard the ship is kept by the first officer.

Mr. KIEFER.—I want the Commissioner to note the extreme clean and unused condition it is in.

Mr. DORR.—On page 5, we have a list of the crew and report of the character. And on page 12 we

have an entry of a man deserting, witnessed by Alex. McDonald.

(Witness excused.) [62]

[Testimony of Alex. McDonald, for Respondent (Recalled).]

ALEX. McDONALD, recalled for further

Cross-examination.

Q. (Mr. KIEFER.) How soon was Wilson taken off the boat after he was injured?

A. I could not tell you in so many minutes. It would not take us very long after we left the wharf until we got to the buoy. As we were fast to the buoy I sent a fellow to help Wilson over into a launch; I could not be there myself, because I had to be looking after making fast.

Q. Was not more than half an hour?

A. I don't think it could be any more.

Q. Mr. McDonald, had the steps leading from the poop-deck down to the break of the poop been removed to make room for the deckload?

A. We had a full deckload.

Q. Had these steps that were there been removed?

A. From the top of the house? No.

Q. Perhaps you do not understand me. The steps at the break of the poop where Wilson fell, had the steps been removed? A. No.

Q. In coming down from these steps a man had to step on the deckload, from where Wilson had been to step on the deck?

A. He came down off the top of the house, the

(Testimony of Alex. McDonald.)

steps came down from the house to the half deck, and from that deck again to the main deck, and the steps down here, from the half deck down, the steps were there, but the cargo was around.

Q. A man going down there had to step on the deckload, [63] the timbers?

A. There was only a step there.

Q. When he got down he had to step on the deckload of timbers?

A. There was one step from the half deck to the deck.

Q. (Mr. DORR.) What Mr. Kiefer wants to know is, whether they had been removed.

A. No, they had not been removed, but they were covered in with cargo.

Q. (Mr. KIEFER.) What was that cargo?

A. Timbers and lumber.

Q. That is where he slipped and fell? A. Yes.

Q. (Mr. DORR.) Was that where he slipped and fell?

A. I did not see him fall at all; but there is a man aboard the ship that seen him fall.

Q. (Mr. KIEFER.) Your voyage has just ended, you just got back on the 5th or 6th?

A. Whenever I signed clear.

Q. That was within the last couple of days?

A. Yes.

Q. You arrived on Sunday? A. Yes, sir.

Q. And signed off Monday or Tuesday?

A. Paid off Monday.

(Testimony of witness closed.) [64]

Seattle, Washington, October 8, 1913.

Present: Mr. KIEFER, for the Libelant.
Mr. DORR, for the Respondent.

Further Testimony on Behalf of Libelant.

[Testimony of Dr. J. E. Godfrey, for Libelant.]

Dr. J. E. GODFREY, a witness called on behalf of the libelant, being duly sworn, testified as follows:

Q. (Mr. KIEFER.) Doctor, do you reside in the city? A. Yes, sir.

Q. You are a practicing physician? A. I am.

Q. Were you connected with Providence Hospital staff in April last? A. I was.

Q. Did you on the 23d of April attend J. W. Wilson? A. I did.

Q. He is a big, stout man?

A. A very fat man.

Q. What did you find his physical condition to be when you attended him?

A. His physical condition was pretty good. He had a dislocated shoulder. I cannot tell you offhand whether right or left shoulder, but I think it was his right. I have it in my notes at the house but did not have an opportunity to get them after I was notified to be here, but his shoulder was drooping and flat and dislocated.

Q. The usual conditions of an injury of that character? A. Yes, sir. [65]

Q. Now, I will ask you, Doctor, whether you attended him and fixed up his injuries?

A. We gave him an anaesthetic on the bed in the ward, in the presence of the other patients of the

(Testimony of Dr. J. E. Godfrey.)

ward and the ward steward was with me at the time, and I put his shoulder back in place, and I think a day or two after we had an X-ray picture taken, which I have at the hospital.

Q. What was the nature of the injury, was it a serious dislocation, or was there a fracture accompanying it?

A. There was evidently no fracture, but there was a separation of the clavicle and the scapula, that is the collar-bone and the shoulder blade. There was not any fracture evident in the picture.

Q. When did you last see him after that?

A. I could not tell you the definite date, but it was a month or six weeks after that.

Q. It was June sometime? A. I think so.

Q. Now, what was his condition at that time, was he able to work?

A. Well, he was complaining of pain in the shoulder, though he had good movement.

Q. He was a man pretty well advanced in years?

A. Pretty well.

Q. Would a man of his build and age recover as rapidly from an injury of that character as a younger and lighter man?

A. No, I think not. He was a fat, flabby man.

Q. Now, Doctor, what was his condition when you attended him [66] as to being drunk or sober?

A. His condition when I found him, he was perfectly rational, answered all questions to me distinctly, how the accident happened. That, I think he was standing on the deck, as near as I can give it

(Testimony of Dr. J. E. Godfrey.)

from memory, and that he fell in some way—

Q. You need not tell what he said, Doctor, but was he drunk or sober, in your opinion?

A. Well, he was perfectly rational, and could tell me everything, and he was not drunk, no, he was sober. He had been drinking.

Q. He had had some liquor?

A. He had had some liquor; there was the odor of liquor on his breath.

Q. If he had been given a stimulant after the accident would that account for the condition in which you found his breath?

A. Yes, surely, liquor at any time, before or after.

Q. Doctor, what was your charge for these services? A. Fifty dollars.

Q. That has not been paid?

A. That has not been paid.

Cross-examination.

Q. (Mr. DORR.) What time of day was it, Doctor, that you called upon him?

A. I think it was perhaps half-past nine or ten at night.

Q. Was the odor of liquor very apparent or scarcely noticeable?

A. I knew he had had some liquor, it was apparent enough [67] for that. We knew he had had some but he was not apparently the worse for liquor.

Q. In your opinion, more than would have resulted from a single drink? What is your idea about that?

A. Well, a single drink would give the odor on his breath I do not know how many drinks he had,

(Testimony of Dr. J. E. Godfrey.)

that is a pretty hard thing to say, but at the same time he was perfectly rational.

Q. He was not under the influence at all?

A. No. He was sitting there quietly and was not acting up or anything, and did not act as a drunken man would act, that was at the time I saw him.

(Testimony of witness closed.)

Hearing adjourned. [68]

[Certificate of U. S. Commissioner to Transcript of Testimony.]

United States of America,
Western District of Washington,
Northern Division,
Seattle, Washington,—ss.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, do hereby certify that the foregoing transcript, from page 1 to page 46, both inclusive, together with the exhibits returned herewith, contains all of the testimony offered by the parties before me on the dates indicated in said transcript.

The several witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth.

I reduced the testimony to writing in shorthand and thereafter caused the same to be typewritten.

Proctors for the parties stipulated waiving the reading and signing of the testimony by the several witnesses, agreeing that said testimony when returned by me into court should have the same force and effect as if read and signed by them.

I further certify that I am not of counsel nor in any way interested in the event of this suit.

Witness my hand and official seal this 10th day of November, 1913.

[Seal] A. C. BOWMAN,
U. S. Commissioner. [69]

COMMISSIONER'S TAXABLE COSTS:

Libelant:

Hearings for Libelant May 23, June 20, October 8, 1913	9.00
Administering oaths to 8 witnesses	.80
Marking and filing 1 exhibit	.10
Transcript above hearings, 85 folios at 10c	8.50
½ fees preparing and making findings ($6).	3.00
	$21.40

Claimant:

Hearing for Respondent Oct. 8, 1913	3.00
Administering oaths to 3 witnesses	.30
Marking and filing 1 exhibit	.10
Transcript above hearing 40 folios at 10c	4.00
½ fees preparing and making findings ($6).	3.00
	$10.40

[Indorsed]: Testimony Reported by U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 4, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [70]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY,

Respondent.

Order to Transmit Original Exhibits.

Now, on this 4th day of February, 1914, upon motion of Messrs. Dorr & Hadley, proctors for appellant, and for sufficient cause appearing, it is ordered that the Libelant's Exhibit "A" and Respondent's Exhibit "A," filed and introduced as evidence upon the trial of this cause, be, by the Clerk of this Court, forwarded to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered, together with the apostles on appeal in this cause.

JEREMIAH NETERER,
District Judge. [71]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY,

Respondent.

Findings of Fact and Conclusions of Law [of U. S. Commissioner].

To the Honorable Judges of the Above-entitled Court:

This action is brought by the libelant to recover wages as seaman on board the brig "Harriet G.," and for hospital service and medical attendance after an injury occurred to him on board, against the respondent, the owner of the "Harriet G."

The respondent in its amended answer denies the performance of service as seaman by libelant, and for affirmative defense alleges that the contract entered into between the libelant and the master of the brig, evidenced by shipping articles, had been violated by the libelant before commencement of the voyage, and asks that the libel be dismissed.

The Shipping Articles provide, among other things, that "No dangerous weapons or grog allowed, and none to be brought on board by the crew." The respondent claims that the libelant violated the contract by bringing liquor on board the brig.

It is further claimed by the respondent that the voyage had not begun at the time of the accident to libelant.

The undisputed testimony shows that the libelant was employed as cook on board the brig "Harriet G.," at eighty dollars per month, for a voyage from Seattle, Washington, to [72] Port Heiden, Alaska, and return, not exceeding six months. That the shipping articles required by law were signed by the libelant on the 21st day of April, 1913. That on the 23d

day of April, 1913, at about 2 o'clock P. M., the brig, in tow of a tug, left the dock in the port of Seattle, and was towed to a buoy in the bay, the vessel having completed loading prior to that time. That after the vessel left the dock in tow of the tug, the libelant in passing from the aft part of the vessel to go forward to the galley, sustained the injury complained of in the libel.

The testimony shows that the companionway or steps leading from the half deck to the main deck had either been removed or covered with deckload consisting of piles which had been placed on the main deck. The testimony also shows that the libelant knew, in the forenoon of the day on which the accident occurred, that the main deck at that part of the vessel, had been loaded with piles; but had forgotten that fact and attempted to use the steps in the usual manner; and, realizing the changed condition too late to stop, grasped a line or stay with his left hand to break his fall. It also appears from the testimony that the libelant is about fifty-nine years of age and at the time of the accident weighed about three hundred pounds, and, in his effort to save himself from falling, dislocated his left shoulder. An officer of the ship being advised of the accident, as soon as the vessel came alongside the buoy procured a launch and sent an officer ashore with the libelant, and caused the libelant to be taken to Providence Hospital for treatment. The evidence further shows that the master did not furnish the libelant a certificate entitling him to the service of a marine doctor. [73]

The evidence further shows that the libelant, prior

to the time of the accident, had purchased a quantity of liquor, a case at least, and had brought the same on board the vessel, but upon its discovery by the master of the vessel on the forenoon of the day on which the accident occurred, it was taken by the master out of the possession of the libelant.

The testimony of the witnesses for the respondent is directed to the point that the libelant was intoxicated prior to and at the time of the accident. This is denied by the libelant and his witnesses. From the testimony I am unable to conclude that the libelant was in such a condition as to warrant me in finding that the accident was due to intoxication, or to be sufficiently under the influence of liquor as to justify the respondent in claiming the right to rescind the contract of shipment for that reason. As to the particular violation of the articles complained of, the bringing of intoxicating liquor on board the vessel, no breach of contract was claimed at the time of the discovery of the liquor, and apparently this violation of the contract was treated as simply a breach of discipline by the master; for, there is no evidence in the record to show that the liquor was returned to the shore or disposed of in other than the usual way.

After the signing of the shipping articles on the 21st of April, 1913, the contract as between the libelant and the master of the vessel was in force, and the libelant was subject to whatever discipline the master saw fit to enforce, and the contention of the respondent that the voyage had not begun at the time of the accident, seems to me, under the circum-

stances, to be unavailable.

The claim of the libelant for maintenance during the [74] period of recovery, is not supported by sufficient definite proof to enable me to make a finding thereon.

There is no dispute as to the amount due for hospital service or for medical attendance. For hospital service I find there is $30.60, and for medical attendance, $50, due.

It is contended by the respondent that if any liability attaches to it, that under section 4527, R. S., only one month's pay should be awarded the libelant beyond the hospital service and medical attendance.

After considering the testimony offered, and the argument of counsel as to the law applicable to this particular case, I find that the libelant is entitled to wages at eighty dollars per month until the end of the voyage, to wit: From April 21st, 1913, to October 5th, 1913, amounting to $440; $30.60 for hospital service and $50 for medical attendance. That a decree should be entered in his favor against the respondent in the sum of $520.60, together with his costs and disbursements herein.

Dec. 2, 1913.

Respectfully submitted,

A. C. BOWMAN,
U. S. Commissioner.

[Indorsed]: Findings of U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 4, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [75]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Exceptions of Respondent to Findings of Fact and Conclusions of Law of Commissioner.

To the Honorable Judges of the Above-entitled Court:

The respondent, by Dorr & Hadley, its proctors, excepts to the findings of fact and conclusions of law filed herein by the United States Commissioner, as follows:

I.

Respondent excepts to the allowance of wages to libelant at $80 per month from April 21st, 1913, to October 5th, 1913, amounting to $440, the same being contrary to the law and the evidence.

II.

Respondent excepts to the allowance to libelant of $30.60 for hospital service and $50 for medical attendance, the same being contrary to the law and the evidence. [76]

III.

Respondent excepts to the conclusion that a decree

should be entered in favor of libelant and against respondent in the sum of $520.60 with costs, the same being contrary to the law and the evidence.

IV.

Respondent excepts to the refusal of the commissioner to find that respondent was entitled to a decree in its favor, with costs, the same being supported by the law and the evidence.

DORR & HADLEY,
Proctors for Respondent.

Service of the within Exceptions is accepted and receipt of copy admitted this 5th day of December, 1913.

JAMES KIEFER,
Proctor for Libelant.

[Indorsed]: Exceptions of Respondent to Findings of Fact and Conclusions of Law of Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 6, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [77]

United States District Court, Western District of Washington, Northern Division.

IN ADMIRALTY—No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY,

Respondent.

Filed Jan., 1914.

[Decision] on Exceptions to Findings and Conclusions of Commissioner.

JAMES KIEFER, for Libelant.

DORR & HADLEY, for Respondent.

NETERER, District Judge.

The libellant commenced this action to recover wages as seaman on board the brig "Harriet G.," and for hospital expenses and medical attendance in effecting a cure for the injury received on board. Respondent denies performance of services as seaman, denies all liability, and further alleges that libellant had violated conditions of the shipping articles and was discharged before the voyage began. The provision of the shipping articles alleged to have been violated is as follows:

> "No . . . . grog allowed, and none to be brought on board by the crew."

Libellant took on board a five-gallon cask of whiskey which was taken possession of by the master, the seal of which was unbroken. No breach of contract was asserted at the time by the respondent, nor was anything done other than the taking possession of the whiskey by the master, and the matter was treated as a breach of discipline. The testimony is conclusive that libellant was employed as cook on board the brig "Harriet G." [78] at $80 per month, for a voyage from Seattle, Washington, to Port Heiden, Alaska, and return, not exceeding six months. The shipping articles were signed by the libellant on the 21st day of April, 1913. On the 23d

day of April, 1913, about two o'clock P. M., the brig in tow of a tug left the dock in the port of Seattle and was towed to a buoy in the bay, the vessel having been fully loaded. After the vessel left the dock libellant in passing from the aft part of the vessel to go forward to the galley sustained the injury. An officer of the ship being advised of the accident, procured a launch and sent libellant ashore, and caused him to be taken to Providence Hospital for treatment. The master did not furnish libellant a certificate entitling him to the services of a marine doctor.

An examination of the testimony convinces me that libellant was not in an intoxicated condition; that nothing was said to libellant at the time, nor anything done with relation thereto. There was no conduct on the part of libellant disclosed by the testimony which in any way disqualified him from performing his duties, and the master would not have been justified in discharging him.

Villa vs. Herman, 101 Fed. 132.

Did the voyage commence when the brig pulled away from the dock and proceeded to the buoy on the afternoon of April 23d, or did it not commence until the 25th when it left the buoy and proceeded directly on its voyage? Garver's Carriage by Sea (5th Ed.), sec. 148, states the rule to be that if a vessel is lying at her port loading and has to move from the place at which she is lying to go to a loading berth, the "voyage" commences as soon as she breaks ground to go to that berth. Reason would suggest that a voyage at least could be said to commence when a vessel leaves her moorings, loaded, and proceeds out

into the open water, even though she might anchor at the buoy for several days. The Supreme Court of Massachusetts in Bowen vs. Hope Insurance [79] Co., 37 Mass. 275, 32 Am. Dec. 213, lays down the rule that a voyage is begun when the vessel leaves her moorings, proceeds down the stream, and goes to an anchorage to lie for favorable winds.

> "That the vessel has moved on the prosecution of the voyage, whether in the sea, or an arm of the sea, whether in a river or a canal communicating with the sea, enables us to say she is on her passage, and exposed to the perils of such passage. This vessel had sailed within the case of Bond vs. Nutt (Cowp. 601, 607). Lord Mansfield there mentions a ship as having commenced her voyage, though she had barely begun to sail, and was stopped by an embargo. . . . . In short, the least locomotion with readiness of equipment and clearance satisfies a warranty to sail. Pettigrew vs. Pringle, 3 Barn. & Adolph. 514."

Union Insurance Co. vs. Tysen, 3 Hill (N. Y.), 118;

Cochrane vs. Fisher, 1 Crompt., Mees. & Rosc. 809.

There is no testimony in this case that libellant was discharged. His employment was admitted. The testimony shows that he had worked at least two days. Sec. 4529, Revised Statutes, provides:

> "The master . . . . shall pay to every seaman his wages . . . . at the time of his discharge."

No wages were paid libellant, nor anything done with relation to discharge other than taking libellant ashore and employing another cook. The employment of a cook was necessary. The libellant was incapacitated by the injury and a duty devolved upon the respondent to effect his cure, and pay his wages to the end of the voyage.

The Osceola, 189 U. S. 158;
The New York, 204 Fed. 764;
The City of Alexandria, 17 Fed. 390;
The Fullerton, 167 Fed. 1;
The Nyack, 199 Fed. 383.

The contention that Sec. 4527, Rev. St., applies to this case, and that libellant cannot in any event recover more than one month's wages under the findings upon the facts cannot be sustained. This section provides: [80]

> "Any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, shall be entitled to receive from the master . . . . in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation."

The voyage having commenced, and libellant not having been discharged, this section has no application.

The Staghound and the Game Cock, 97 Fed. 973; St. Paul, 77 Fed. 998; and Raymond vs. The Ella S. Thayer, 40 Fed. 902, are readily distinguished.

There is no dispute as to the expenses incurred in

effecting a cure, to wit, $30.60 for hospital service, and $50 for medical attendance.

I think that the report of the Commissioner in finding that libellant is entitled to recover his wages from April 21, 1913, to October 5, 1913, to wit, $440 and $80.60 for hospital and medical attendance, a total of $520, should be sustained.

A decree may be entered accordingly.

JEREMIAH NETERER,
Judge.

[Indorsed]: Court's Decision on Exceptions to Findings and Conclusions of Commissioner. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 16, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [81]

In the District Court of the United States in and for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 2477.

J. W. WILSON,
Libelant,

vs.

MANHATTAN CANNING COMPANY,
Respondent.

Decree.

In this cause the findings and conclusions of the Commissioner having been filed, finding for the libelant in the sum of $520.00 and costs, and the libelant having excepted thereto and the respondent having

excepted thereto, the matter came on for final hearing and argument before the court on December 31, 1913, and the Court having heard the argument of proctors for the parties, and having taken the cause under advisement, did on January 1, 1914, file the decision and opinion of the Court in writing wherein and whereby the findings and conclusions of the Commissioner were approved and confirmed.

It is now, therefore, by the Court ordered, considered, adjudged and decreed, and the Court does hereby order, consider, adjudge and decree that the libelant, J. W. Wilson, do have and recover of and from the respondent, Manhattan Canning Company, the sum of five hundred and twenty ($520.00) dollars, together with the libelant's costs herein to be taxed upon the cause of action pleaded in the libel herein, and that unless said decree be stayed by an appeal and *supersedeas* bond according to law within ten days from this date [82] that said libelant have execution against said respondent therefor.

Done in open court January 19th, 1914.

JEREMIAH NETERER,
Judge.

Copy of within Decree received and service of same acknowledged this 17th day of January, 1914.

DORR & HADLEY,
For Respondent.

[Indorsed]: Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 19, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [83]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Notice of Appeal.

To J. W. Wilson, Libelant in the Above-entitled Cause, and James Kiefer, Esq., His Proctor:

YOU AND EACH OF YOU will please take notice that the Manhattan Canning Company, a corporation, respondent in the above-entitled cause, hereby appeals from a decree in favor of the libelant, made and entered herein on January 19th, 1914, to the United States Circuit Court of Appeals, for the Ninth Circuit.

Dated this 27th day of January, 1914.

DORR & HADLEY,
Proctors for Respondent.

[Indorsed]: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Jan. 27, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [84]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Notice of Filing Notice of Appeal and Bond on Appeal.

To J. W. Wilson and to James Kiefer, Esq., His Proctor:

YOU AND EACH OF YOU will please take notice that the above-named respondent has this day filed a notice of appeal herein and a bond, staying execution pending said appeal, copies of which said notice and bond are herewith served upon you.

Dated this 27th day of January, A. D. 1914.

DORR & HADLEY,
Proctors for Respondent.

Service copies of the within Notice of Appeal and Bond on Appeal is accepted and receipt of copy admitted this 27th day of January, 1914.

JAMES KIEFER,
Attorney for Libelant.

[Indorsed]: Notice of Filing Notice of Appeal and Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division,

Jan. 27, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [85]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Assignments of Errors.

Now comes the Manhattan Canning Company, a corporation, respondent and appellant herein, and assigns errors in the rulings of the court and in its proceedings, orders, decisions and decrees herein, as follows, to wit:

I.

The decision of the Court and the order overruling respondent's exceptions to the libel, which said exceptions are as follows, to wit:

> "1. (Exception.) Because from the allegations of the libel it appears that libelant's employment ceased before the commencement of the voyage, and that libelant is therefore not entitled to the relief claimed, to wit: wages for the entire voyage, nor is libelant entitled to wages under the allegation of the libel for any period to exceed one month"

was and is, and is here assigned as error. [86]

II.

The Court erred in refusing to find that, from the allegation of the libel, libelant was not entitled to the relief claimed, to wit, wages for the entire voyage, nor to wages for any period to exceed one month.

III.

The cause having been referred to A. C. Bowman, United States Commissioner, to take the testimony and make findings of fact and conclusions of law, and said Commissioner having found for the libelant and against the respondent in the sum of $520 and costs, which findings and conclusions were confirmed by the Court over the exceptions of respondent, respondent and appellant here assigns, as error, the refusal of the Court to sustain the exceptions of respondent, which were and are as follows, to wit:

> "I. Respondent excepts to the allowance of wages to libelant at $80 per month from April 21st, 1913, to October 5th, 1913, amounting to $440, the same being contrary to the law and the evidence."
>
> "II. Respondent excepts to the allowance to libelant of $30.60 for hospital service and $50 for medical attendance, the same being contrary to the law and the evidence."
>
> "III. Respondent excepts to the conclusion that a decree should be entered in favor of libelant and against respondent in the sum of $520 with costs, the same being contrary to the law and the evidence."
>
> "IV. Respondent excepts to the refusal of the commissioner to find that respondent was en-

titled to a decree in its favor, with costs, the same being supported by the law and the evidence."

IV.

The Court erred in confirming the findings and conclusions of the United States Commissioner as aforesaid. [87]

V.

The entering of the final decree in favor of the libelant and against respondent was and is, and is here assigned as, error.

VI.

The refusal of the Court to enter a decree in this cause in favor of respondent and against libelant, was and is, and is here assigned as error.

WHEREFORE, appellant prays the judgment of the United States Circuit Court of Appeals, for the Ninth Circuit, in the premises, that the decree appealed from be reversed, and that it recover its costs herein incurred.

DORR & HADLEY,
Proctors for Respondent.

Service of the within is accepted and receipt of copy admitted this 31st day of Jan.

JAS. KIEFER,
Attorney for Libelant.

[Indorsed]: Assignments of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 30, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [88]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

Bond on Appeal Staying Execution.

KNOW ALL MEN BY THESE PRESENTS: That the Manhattan Canning Company, a corporation duly organized and existing under the laws of the State of Washington, as principal, and the Fidelity and Deposit Company of Maryland, a duly organized bonding company, authorized to operate under and by virtue of the laws of the State of Washington, as surety, are held and firmly bound unto J. W. Wilson, his heirs, executor, administrator and assigns, in the sum of two hundred and fifty dollars ($250), and in the further sum of one thousand dollars ($1,000), the payment of which sums, well and truly to be made, we bind ourselves, and each of us, our and each of our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this the 27th day of January, A. D. 1914.

WHEREAS, in the above-entitled cause, a decree was made and entered on January 19th, 1914, in favor of the said J. W. Wilson, libelant, and against

the Manhattan Canning Company, respondent, in the sum of $520 and costs, from which decree [89] respondent is about to appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and desires to stay the execution of said decree during said appeal.

NOW, THEREFORE, the condition of this obligation is such that if the above-named respondent shall prosecute said appeal with effect, and pay all costs which may be awarded against it, if the appeal is not sustained, and if said respondent shall abide by and perform whatever decree may be rendered in this cause by the said United States Circuit Court of Appeals, or on the mandate of said Court, by the Court below, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

MANHATTAN CANNING COMPANY. [Seal]
By T. J. GORMAN,
President,
Attest: S. HARRINGTON,
Secretary,
Principal.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, [Seal]
By J. A. CATHCART,
Attorney in Fact,
Surety.

Attest: A. W. WHALLEY, Agent.

Approved Jan. 27, 1914.
JEREMIAH NETERER,
Judge.

[Indorsed]: Bond on Appeal Staying Execution. Filed in the U. S. District Court, Western Dist. of Washington. Jan. 27, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [90]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corp.,

Respondent.

Praecipe for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

You will please prepare and certify the following pleadings, exhibits, records, proceedings, testimony and papers to be used on appeal of the above cause to the United States Circuit Court of Appeals, for the Ninth Circuit:

1. Caption exhibiting the proper style of the Court and the title of the cause; and a statement showing the time of commencement of the action, the names of the parties, the several dates on which the respective pleadings were filed; the fact that the nature of the action is a libel *in personam,* and that the respondent was served with a Citation on May 19, 1913; that the cause was referred to the United States Commissioner, for the purpose of tak-

ing testimony and making findings and conclusions; that the United States Commissioner found for the libelant in the sum of $520 and costs; that a decree was entered herein by Judge Neterer on January 19th, A. D. 1914; that a notice of appeal was filed herein on January 27, A. D. 1914.

2. All the pleadings.
3. All the testimony taken before the United States Commissioner, and exhibits. **[91]**
4. Findings and Conclusions of the United States Commissioner.
5. Exceptions of Respondent to Findings and Conclusions of Commissioner.
6. Opinion of Judge Cushman on Exceptions to Libel and Opinion of Judge Neterer on Exceptions to Findings and Conclusions of Commissioner.
7. Final Decree, and Notice of Appeal, and Notice of filing and serving thereof.
8. Assignments of Error.
9. Bond on Appeal.

Dated this 31st day of January, A. D. 1914.

DORR & HADLEY,
Proctors for Respondent.

[Indorsed]: Praecipe for Apostles on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 2, 1914. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy. **[92]**

[Certificate of Clerk U. S. District Court to Apostles.]

In the District Court of the United States, for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY,

Defendant.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States, for the Western District of Washington, do hereby certify the foregoing 92 typewritten pages, numbered from 1 to 92, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on appeal to the said Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Western District of Washington.

I further certify the following to be a full, true

and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the respondent and appellant for the preparation and certification of the typewritten record on appeal issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S., as Amended by Sec. 6, Act of March 2, 1905), for making transcript of the record for printing purposes; 230 folios at 30c per folio.....	$69.00
Certificate to certified copy of typewritten transcript of record.....	.30
Seal to said certificate.....	.40
Certificate to original exhibits.....	.30
Seal to said certificate.....	.40
	$70.40

I hereby certify that the above cost for preparing and certifying record, amounting to $70.40, has been paid to me by Messrs. Dorr & Hadley, counsel for respondent and appellant.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 5th day of February, 1914.

[Seal] FRANK L. CROSBY,
Clerk.

[Endorsed]: No. 2377. United States Circuit Court of Appeals for the Ninth Circuit. Manhattan Canning Company, a Corporation, Appellant, vs. J. W. Wilson, Appellee. Apostles. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Received and filed February 9, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

[Certificate of Clerk U. S. District Court to Original Exhibits.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2477.

J. W. WILSON,

Libelant,

vs.

MANHATTAN CANNING COMPANY, a Corporation,

Respondent.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify that the hereto attached sealed package contains the original exhibits intro-

duced and used upon the hearing and trial of the above-entitled cause, as follows:

Libelant's Exhibit "A" and Respondent's Exhibit "A"

which said original exhibits are herewith transmitted to the Circuit Court of Appeals, there to be inspected and considered together with the transcript of the record on appeal in the above-entitled cause; which said exhibits are so transmitted pursuant to the Order of the said District Court so directing, a copy of which said order will be found on page 71 of the record on appeal in said above-entitled cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Seattle, in said District, this 5th day of February, 1913.

[Seal] FRANK L. CROSBY,
Clerk.

[Libelant's Exhibit "A"—Hospital Bill.]

Seattle, Wash., May 5, 1913.

Mr. J. W. Wilson,

To Sisters of Charity, Dr.

PROVIDENCE HOSPITAL.

	Amount
To 12 day's board and attendance from Apr. 23 to May 5, 1913, at $12.00 per week.....	20.60
Use of operating room.....	
Use of X-Ray.....	10.00
Medicines and Dressings	30.60
Liquors.....	
Dr. Godfrey.....	50.00

Received Payment.

[Endorsed]: Libelant's Ex. "A." No. 2477. United States District Court, Western District of Washington, Northern Division. J. W. Wilson, Libellant, vs. Manhattan Canning Co., Respondent. Filed June 20, 1913. A. C. Bowman. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 4, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

No. 2377. U. S. Circuit Court of Appeals for the Ninth Circuit. Libelant's Exhibit "A." Received Feb. 9, 1914. F. D. Monckton, Clerk.

LAIMANT

Form 705B

Department of Commerce and Labor
BUREAU OF NAVIGATION
SHIPPING SERVICE

Notice to master of a merchant vessel of the United States ... signatures) to be placed or posted up in such pa... ; that Section 10 of the Act of June 26, 1884, as amended ... advance wages to seamen shipping in ports of the U...

CHAMBERLAIN,
Commissioner of Navigation.

SEC. 10. (a) ... to pay such advance wages to any other person. Any person paying such wages so advanced, and may also be imprisoned for a period not exceeding ... the master or owner thereof from full payment of wages after the sa... receive, either directly or indirectly, from any seaman or other person s... such offense be deemed guilty of a misdemeanor, and shall be imprisoned ...

(b) That it sh... , parents, wife, sister, or children. But no allotment whatever shall be a... States and the Dominion of Canada, Newfoundland, the West Indies and ... ... ing to the foregoing scale. And it is hereby agreed, ... s of the person guilty of the same. And if any person enters himse... agreed that if any member of the crew considers himself to be aggrie... nner, who shall thereupon take such steps as the case may require.

It is c...

Crew to... referred ...

cargoes an...

the Maste...

The authori... *ibed their names on the other side* m... *res mentioned.*

... *Master, on the* ... *day*

This is to be signed ...

... VOYAGE.

DATE OF COMMENCEMENT OF VOYAGE. ... declare to the truth of the entries in this ... and account of crew, etc.

..., *Master.*

1. Here the voyage i... he port or country at which the voyage is to terminate.
2. If these words are ...
3. Sec. 4608, R. S., p...
4. Here any other st...

N. B.—Forms must ... sufficiently large form is used. If more men are ... and used.

Any Erasure, In... Consular Agent, to be made with the consent

11—519

Signature of Seaman	Birthplace	Age	Height Feet	Inches	Complexion	Hair	Wages per Month	Wages per Run	Amounts of Monthly Allotment or Times of Payment	Allotment Payable to—	Place and Time of Entry	Time Which to be on Board	In what Capacity
											Seattle, Wash April, 21, 1913	1913 7 A.M.	
A. McDonald	Can *	53	5	9	L	L	90 –		+ 5¢ per bbl for all fish put in bbls and 2½¢ per bbl for fish left in tanks			Apr 21	Ch Mate
James Muir	Scot *	24	5	5	L	L	55 –		+ 5¢ " " " " " " " " 2½¢ " " " " " "			" 21	Bos'n ~~2nd Mate~~
J. W. Wilson	US	58	5	5	L	L	80 –					" 21	Cook
Berckley Harris	US	22	5	8	L	L	25 –					" 21	Galleyman
A. Watters	Can *	45	5	4	D	D	50 –		+ 5¢ per bbl for all fish put in bbls and 2½¢ per bbl for fish left in tanks			Apr 21	A B + ~~Fisherman~~
C. H. Newnson	Russ *	50	5	9	L	L	100 –					" 22	Carpenter
H. Ellman	Russ *	57	5	6	L	L	50 –		+ 5¢ " " " " " " " " 2½¢ " " " " " "			" 21	Trap Boss
W Schulz	Ger	32	5	7	L	L	50 –		+ 5¢ per bbl for all fish put in bbls and 2½¢ per bbl for fish left in tanks			Apr 21	AB and Fisherman
F Ccone	Italy	42	5	7	D	D	50 –		+ 5 " " " " " " " " 2½¢ " " " " " "			" 21	A B and Fisherman
Edward Flaherty	Ir *	33	5	8	D	D	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A B and Fisherman
Mike Clipper	Austria	27	5	6	D	D	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A B. and Fisherman
Ole Peterson	Nor	26	5	7	L	L	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A B and Fisherman
Geo. H. Russell	US	22	5	10	L	L	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A B and Fisherman
Freeman O. Downie	Can *	27	5	6	D	D	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A. B and Fisherman
Harold P. J. Lorenzen	US	20	5	11	L	L	50 –		5 " " " " " " " " 2½ " " " " " "			21	A B and Fisherman
George Skiffington	N.F.	52	5	10	L	L	50 –		5 " " " " " " " " 2½ " " " " " "			" 21	A B and Fisherman
Gust H Ekwall	Swe	38	5	10	D	D	50 –		5 " " " " " " " " 2½ " " " " " "			" 21	A B + F
Ben Olsson	Swe	32	5	7	L	L	50 –		5 " " " " " " " " 2½ " " " " " "			" 21	A B + F
H. S. Anderson	US	35	5	10	L	L	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	Engineer
G. A. Anderson	Swe.	29	5	10	L	L	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A B + F
L. Anderson	US	23	5	10	L	L	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A B + F
Matt Nielsen	Nor	27	5	7	L	L	50 –		+ 5 " " " " " " " " 2½ " " " " " "			" 21	A B + F
T J Mitchell	Eng	28	5	4	D	D	25 –					" 23	Galleyman (R + ~)
G Reed	Nor *	48	5	8	L	L	80					" 24	Cook

JAMES KNOX U.S. SHIPPING COMMISSIONER FOR THE PORT OF PORT TOWNSEND

I hereby Certify this to be a true and correct copy of the articles now on file in this Office of the Bq. Harriet G

F. H. Chandler

Deputy U.S. Shipping Commissioner

[CLAIMANT'S EXHIBIT A. SHIPPING ARTICLES.]

Form 705B

SHIPPING ARTICLES.

Department of Commerce and Labor
BUREAU OF NAVIGATION
SHIPPING SERVICE

Notice is hereby given that Section 4519 of the U. S. Revised Statutes makes it obligatory on the part of the master of a merchant vessel of the United States, at the commencement of every voyage or engagement, to cause a legible copy of the agreement (omitting signatures) to be placed or posted up in such part of the vessel as to be accessible to the crew, under a penalty not exceeding ONE HUNDRED DOLLARS; that Section 10 of the Act of June 26, 1884, as amended by the Acts of June 19, 1886; December 21, 1898, and April 26, 1904, prohibits the payment of advance wages to seamen shipping in ports of the United States, and that Section 11 of the same law requires that vessels shall be provided with slop-chests.

EUGENE T. CHAMBERLAIN,
Commissioner of Navigation.

ADVANCE WAGES AND ALLOTMENTS.

SEC. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages to any other person. Any person paying such advance wages shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not less than four times the amount of the wages so advanced, and may also be imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages shall in no case, excepting as herein provided, absolve the vessel or the master or owner thereof from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor, and shall be imprisoned not more than six months, or fined not more than five hundred dollars.

(b) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his grandparents, parents, wife, sister, or children. But no allotment whatever shall be allowed in the trade between the ports of the United States (except as provided in subdivision C of this section) or in trade between ports of the United States and the Dominion of Canada, Newfoundland, the West Indies and Mexico.

(c) That it shall be lawful for any seaman engaged in a vessel bound from a port on the Atlantic to a port on the Pacific or vice versa, or in a vessel engaged in foreign trade, except trade between the United States and the Dominion of Canada or Newfoundland or the West Indies or the Republic of Mexico, to stipulate in his shipping agreement for an allotment of an amount, to be fixed by regulation of the Commissioner of Navigation, with the approval of the Secretary of Commerce and Labor, not exceeding one month's wages, to an original creditor in liquidation of any just debt for board or clothing which he may have contracted prior to engagement.

(d) That no allotment note shall be valid unless signed by and approved by the shipping commissioner. It shall be the duty of said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

(e) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation as above described of a seaman under this section or shall make a false statement of the nature or amount of any debt claimed to be due from any seaman under this section shall for every such offense be punishable by a fine not exceeding five hundred dollars or imprisonment not exceeding six months, at the discretion of the court.

(f) That this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation: *Provided*, That treaties in force between the United States and foreign nations do not conflict.—*Act of June 26, 1884, as amended by the Acts of June 19, 1886; December 21, 1898; April 26, 1904, and June 28, 1906, sec. 4.*

VESSELS OF UNITED STATES MUST HAVE SLOP-CHESTS, ETC.

SEC. 11. That every vessel mentioned in section forty-five hundred and sixty-nine of the Revised Statutes shall also be provided with a slop-chest, which shall contain a complement of clothing for the intended voyage for each seaman employed, including boots or shoes, hats or caps, under clothing and outer clothing, oiled clothing, and everything necessary for the wear of a seaman; also a full supply of tobacco and blankets. Any of the contents of the slop-chest shall be sold, from time to time, to any or every seaman applying therefor, for his own use, at a profit not exceeding ten per centum of the reasonable wholesale value of the same at the port at which the voyage commenced. And if any such vessel is not provided, before sailing, as herein required, the owner shall be liable to a penalty of not more than five hundred dollars. The provisions of this section shall not apply to vessels plying between the United States and the Dominion of Canada, Newfoundland, the Bermuda Islands, the Bahama Islands, the West Indies, Mexico, and Central America.—*Act June 26, 1884.*

Every vessel bound on any foreign voyage exceeding in length fourteen days shall also be provided with at least one suit of woolen clothing for each seaman, and every vessel in the foreign or domestic trade shall provide a safe and warm room for the use of seamen in cold weather. Failure to make such provision shall subject the owner or master to a penalty of not less than one hundred dollars.—*Sec. 4572, R. S., as amended by the Act of December 21, 1898.*

Vessels engaged in the whaling or fishing business are not covered by the above provisions of law, or by the regulations below regarding scale of provisions.

CORPORAL PUNISHMENT PROHIBITED.

Flogging and all other forms of corporal punishment are hereby prohibited on board any vessel, and no form of corporal punishment on board any vessel shall be deemed justifiable, and any master or other officer thereof who shall violate the aforesaid provisions of this section or either thereof shall be deemed guilty of a misdemeanor, punishable by imprisonment not less than three months or more than two years. Whenever any officer other than the master of such vessel shall violate any provision of this section, it shall be the duty of such master to surrender such officer to the proper authorities as soon as practicable. Any failure upon the part of such master to comply herewith, which failure shall result in the escape of such officer, shall render said master liable in damages to the person illegally punished by such officer.

UNITED STATES OF AMERICA.

ARTICLES OF AGREEMENT BETWEEN MASTER AND SEAMEN IN THE MERCHANT SERVICE OF THE UNITED STATES.

Required by Act of Congress, Title LIII, Revised Statutes of the United States.

Office of the U. S. Shipping Commissioner for the Port of Port Townsend, Wash. APR 21 1913

IT IS AGREED between the Master and seamen, or mariners, of the Bg. Harriet G.

of Port Townsend. Wash. *of which* J. A. McInnis

is at present Master, or whoever shall go for Master, now bound from the Port of Seattle, Wash., *to*

Port Heiden, Alaska

Alaska

and such other ports and places in any part of the world as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding .....SIX..... *calendar months.*[2]

GOING ON SHORE IN FOREIGN PORTS IS PROHIBITED EXCEPT BY PERMISSION OF THE MASTER.

NO DANGEROUS WEAPONS[3] OR GROG ALLOWED, AND NONE TO BE BROUGHT ON BOARD BY THE CREW.

SCALE OF PROVISIONS to be allowed and served out to the Crew during the voyage in addition to the daily issue of lime and lemon juice and sugar, or other antiscorbutics in any case required by law

	Sunday.	Monday.	Tuesday.	Wednesday.	Thursday.	Friday.	Saturday.
Water ..... quarts	4	4	4	4	4	4	4
Biscuit ..... pound	1/2	1/2	1/2	1/2	1/2	1/2	1/2
Beef, salt ..... pounds			1 1/2		1 1/4		1 1/4
Pork, salt ..... pound		1		1		1	
Flour ..... pound	1/2		1/2		1/4		
Canned meat ..... pound	1			1			
Fresh bread ..... pounds	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2
Fish, dry, preserved, or fresh ..... pound						1	
Potatoes or yams ..... pound	1	1	1	1	1	1	1
Canned tomatoes ..... pound	1/2					1/2	
Peas ..... pint			1/2			1/2	
Beans ..... pint		1/2		1/2			
Rice ..... pint		1/2					1/2

	Sunday.	Monday.	Tuesday.	Wednesday.	Thursday.	Friday.	Saturday.
Coffee (green berry) ..... pound	1/16	1/16	1/16	1/16	1/16	1/16	1/16
Tea ..... ounce	1/8	1/8	1/8	1/8	1/8	1/8	1/8
Sugar ..... ounces	3	3	3	3	3	3	3
Molasses ..... pint	1/2		1/2				
Dried fruit ..... ounces	3		3			3	
Pickles ..... pint		1/2		1/2			1/2
Vinegar ..... pint			1/2				
Corn meal ..... ounces	4				4		
Onions ..... ounces	4				4		4
Lard ..... ounce	1	1	1	1	1	1	1
Butter ..... ounce	1	1	1	1	1	1	1
Mustard, pepper, and salt sufficient for seasoning.							

SUBSTITUTES.

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one-and-one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the master may provide, but the right at any time to demand the foregoing scale of provisions.

The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the forecastle of each vessel.

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service to be duly performed the said Master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the foregoing scale. And it is hereby agreed, that any embezzlement or willful or negligent destruction of any part of the vessel's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same. And if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the Master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require.

It is also agreed that[4]

Crew to load and discharge all cargoes and ballast if required by the Master.

The fishermen's contract hereto attached is hereby referred to and made part of these shipping articles.

Voyage to be ended only when decks are cleared and vessel safely moored at dock of next loading Port.

The authority of the Owner or Agent for the allotments mentioned within is in my possession.

..... } *Shipping Commissioner or Consular Officer.*

This is to be signed if such an authority has been produced, and to be scored across in ink if it has not.

IN WITNESS WHEREOF the said parties have subscribed their names on the other side or sides hereof on the days against their respective signatures mentioned.

Signed by J. A. McInnis, *Master, on the* ..... *day of* APR 21 1913, *19*

DATE OF COMMENCEMENT OF VOYAGE.	PORT AT WHICH VOYAGE COMMENCED.	THESE COLUMNS TO BE FILLED UP AT THE END OF THE VOYAGE. DATE OF TERMINATION OF VOYAGE.	PORT AT WHICH VOYAGE TERMINATED.	DATE OF DELIVERY OF LISTS TO SHIPPING COMMISSIONER.	I hereby declare to the truth of the entries in this Agreement and account of crew, etc.
	Seattle, Wash.				, *Master.*

1. Here the voyage is to be described, and the places named at which the ship is to touch; or, if that can not be done, the general nature and probable length of the voyage is to be stated, and the port or country at which the voyage is to terminate.
2. If these words are not necessary they must be stricken out.
3. Sec. 4068, R. S., prohibits the wearing of sheath-knives on shipboard, and the Master informs the crew of this law.
4. Here any other stipulations may be inserted to which the parties agree, and which are not contrary to law.

N. B.—Forms must not be unstitched. No leaves may be taken out of it, and none added or substituted. Care should be taken at the time of engagement that a sufficiently large form is used. If more men are engaged during the voyage than the number for whom signatures are provided in this form, an additional form should be obtained and used.

Any Erasure, Interlineation, or Alteration in this Agreement will be void, unless attested by a Shipping Commissioner, Consul-General, Consul, or Consular Agent, to be made with the consent of the persons interested.

11—619

CERTIFICATES

Or Indorsements made by Shipping Commissioners and Consuls.

Claimants Ex "A"

No. 7477

United States District Court
Western District of Washington.
NORTHERN DIVISION

J. W. Wilson

Libellant.

v

Manhattan Canning Co.

Respondent.

Filed July 20 1913.
A. D. Bowman
U.S. Comr.

FILED IN THE
U S District Court
Western Dist. of Washington.
NORTHERN DIVISION
DEC. 4 1913
FRANK L. CROSBY, Clerk
By _____ Deputy

Case No. 2377.
U. S. CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
CLAIMANTS EXHIBIT A
Received FEB. 9 1914
F. D. MONCKTON, Clerk

AGREEMENT.

THIS AGREEMENT attached to and made a part of the shipping articles between PORT HEIDEN PACKING CO., a corporation of Seattle, Washington, party of the first part, and each of the men signing the articles, hereinafter referred to as party of the second part,

WITNESSETH:

Section 1. The parties of the second part hereby engage in the service of said party of the first part and agree and promise with and to said party of first part for the consideration hereinafter mentioned, that they will during the time they shall remain in the employ of said party of the first part, faithfully and diligently work and labor in the capacity of SEAMEN, FISHERMEN, BEACHMEN, TRAPMEN. Also to work on boats, lighters, steamers and in salteries, canneries, and (or) any other capacity, up and down, and at and about Port Heiden, or elsewhere in Alaska, as directed by the superintendent, during the salmon fishing season of 1913.

Section 2. They agree to give their whole time and energy to the business and interests of said party of the first part and to work day or night (Sundays and holidays not excepted), according to the lawful orders of the captain, superintendent, or whoever may be in charge for the party of the first part, as per specifications of these articles, and for the compensation herein provided, but shall not be required to work for outside parties.

Section 3. The time of service shall be from the date of sailing from, until return to Seattle, Washington, all on vessels to be designated by the party of the first part.

Section 4. Before fishing commences and after it has closed the men shall have one day off in every seven, and if that is not given, they are to be paid at the rate of 40¢ per hour per man for every hour worked on Sunday.

No. 2377

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MANHATTAN CANNING COMPANY, a corporation,

vs.

J. W. WILSON,

Appellee.

Appeal from the United States District Court for the Western District of Washington.

HON. JEREMIAH NETERER, DISTRICT JUDGE.

BRIEF OF APPELLANT

STATEMENT.

This appeal is from a decree of the United States District Court, for the Western District of Washington, Northern Division, in favor of the appellee (libelant below) on a libel in personam, to recover wages, maintenance and expenses of cure.

The libel, filed May 16th, 1913, alleges, in substance, that appellant (respondent below) is the owner of the American brig, "Harriet G."; that on April 21st, 1913, appellee shipped as cook for a six months voyage to Port Heiden, Alaska, at

$80.00 per month, and went aboard on said day, remaining until April 23rd, 1913; on which day, while the brig was being shifted in the harbor from the dock to an anchorage, he fell on the deck without fault on his part, and so injured his shoulder and wrist that he was unable to continue in the service of the ship and perform his duties as cook; that at the direction of his master and officers, he was removed to the Providence Hospital, where he remained from April 23rd, 1913, until May 5th, 1913, incurring a hospital bill of $30.60, and a surgeon's bill of $50.00; that he is unable to work, and will continue so during the remainder of the six months, and that there is no communication by which he can join the vessel; and that appellant has hired a cook to replace appellee.

The libel concludes with a prayer for wages for the entire voyage, for the expense of cure, maintenance during the six months, and further medical attendance (Record, pp. 3-6 inc.).

Appellant excepted to the libel on the grounds that appellee's employment ceased before the voyage was commenced, and that under section 4527 of the Revised Statutes, appellee could, in no event, recover more than one month's wages (Record, p. 9).

These exceptions were overruled, and thereupon appellant filed its answer, denying the material allegations of the libel, and alleging an express agreement in the shipping articles that the time of service should be from the date of sailing until return to Seattle; that the brig sailed on April 25th, 1913,

two days after the date of the alleged injury, and that appellee's term of employment had not commenced at the time of the alleged injury; that the shipping articles expressly provided that appellee was not to bring any intoxicating liquors on board, and that appellee was to conduct himself in a careful and sober manner, these conditions being a part of the consideration for the promise of appellant to pay the wages to appellee; that appellee violated said articles by bringing liquor on board, a quantity of which he drank so that he was unable to conduct himself in a careful and sober manner (Record, pp. 15-18 inc.).

The cause was referred to the United States Commissioner, and after hearing the testimony, he made findings and conclusions permitting the recovery by appellee of wages for the entire voyage, $440.00; for hospital services, $30.60; and for medical attendance, $50.00; a total of $520.60 and costs (Record pp. 63-66 inc.). To this report, the appellant excepted, claiming error in the allowance of wages for the entire voyage and also to the recovery of the hospital and medical expense, and also to the refusal of the commissioner to enter a decree for appellant (Record, pp. 67-68).

The findings and conclusions of the Commissioner were sustained (Opinion of Judge Neterer, Record, p. 69; 210 Fed. 898), and a decree was entered accordingly, from which decree this appeal is prosecuted (Record, pp. 73-75 inc.); and appellant has filed the following:

ASSIGNMENTS OF ERROR.

"I.

The decision of the court and the order overruling respondent's exceptions to the libel, which said exceptions are as follows, to wit:

'1. (Exception) Because from the allegations of the libel it appears that libelant's employment ceased before the commencement of the voyage, and that libelant is therefore not entitled to the relief claimed, to wit: wages for the entire voyage, nor is libelant entitled to wages under the allegations of the libel for any period to exceed one month'

was and is, and is here assigned as error.

II.

The court erred in refusing to find that, from the allegations of the libel, libelant was not entitled to the relief claimed, to wit: wages for the entire voyage, nor to wages for any period to exceed one month.

III.

The cause having been referred to A. C. Bowman, United States Commissioner, to take the testimony and make findings of fact and conclusions of law, and said Commissioner having found for the libelant and against the respondent in the sum of $520.00 and costs, which findings and conclusions were confirmed by the court over the exceptions of respondent, re-

spondent and appellant here assigns, as error, the refusal of the court to sustain the exceptions of respondent, which were and are as follows, to wit:

'1. Respondent excepts to the allowance of wages to libelant at $80.00 per month from April 21st, 1913, to October 5th, 1913, amounting to $440.00, the same being contrary to the law and the evidence.'

'2. Respondent excepts to the allowance to libelant of $30.60 for hospital services and $50.00 for medical attendance, the same being contrary to the law and the evidence.'

'3. Respondent excepts to the conclusion that a decree should be entered in favor of libelant and against respondent in the sum of $520.00 with costs, the same being contrary to the law and the evidence.'

'4. Respondent excepts to the refusal of the commissioner to find that respondent was entitled to a decree in its favor, with costs, the same being supported by the law and the evidence.'

IV.

The court erred in confirming the findings and conclusions of the United States Commissioner as aforesaid.

V.

The entering of the final decree in favor of the libelant and against respondent was and is, and is here assigned as error.

VI.

The refusal of the court to enter a decree in this cause in favor of respondent and against libelant, was and is, and is here assigned as error." (Record, pp. 77-79 inc.)

POINTS AND AUTHORITIES.

ASSIGNMENTS OF ERROR I and II involve the decision of the court, overruling the exceptions to the libel. These exceptions were based on section 4527 of the Revised Statutes, which provides:

> "Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

This section is part of the act of June 8, 1872, Chapter 327, 17 Stat. at L., 262.

The exceptions were overruled on the express ground that the above act was repealed by the act of June 9, 1874, as far as coastwise voyages are concerned, the opinion of the court stating:

> "This repeal is still effective, as, so far as the section relied upon by respondent is concerned, there has been no re-enactment."
>
> (Opinion of Judge Cushman, Record, p. 14, 205 Fed., p. 997.)

Both court and counsel overlooked the later act of August 18, 1890 (6 Fed. Stat. Ann., p. 851), which provides:

> "When a crew is shipped by a shipping commissioner for any American vessel in the coastwise trade, * * * such seamen shall be discharged and receive their wages as provided by * * * sections four thousand five hundred and twenty-six, *four thousand five hundred and twenty-seven.*"

It appears that section 4527 of the Revised Statutes was extended to coastwise voyages, and that such seamen shall be discharged and receive their wages as provided in section 4527; therefore, the decision of the court overruling the exceptions was based on a misapprehension of the law.

This case involves the discharge and amount of wages due a seaman shipped coastwise by the shipping commissioner, so that the foregoing statute is controlling. We do not concede that appellee is entitled to the one month's pay, but we most earnestly insist that under no circumstances should he be allowed to recover wages in excess of that amount.

The allegations in the libel that appellee within two days after signing the articles and before the

ship left the harbor, without fault on his part, dislocated his shoulder

> "so that he was unable to continue in the service of said ship and perform his duties as cook"

clearly bring this action within the purview of section 4527 of the Revised Statutes.

Appellant has at all times insisted that the voyage had not commenced at the time of the alleged injury, but this point is immaterial as the statute also expressly includes cases in which the employment ceased before one month's wages were earned.

Section 4527 of the Revised Statutes was construed in the STAGHOUND AND THE GAMECOCK, 97 Fed. 973 (District Court of Oregon), in which case it was held that seamen shipping for a voyage to Alaska which was terminated by the unseaworthiness of the vessel, were entitled to one month's wages. The same rule should govern in any case in which a seaman was discharged without fault on his part. In the case at bar, the libelant is either entitled to recover one month's wages, or he is entitled to none at all. The denial that the statute controls is, in effect, a denial of the wrongful discharge, or, in other words, an admission that he was rightfully discharged.

In the ST. PAUL, 77 Fed. 998, the seamen were allowed one month's wages under the statute, where their discharge was caused by an injury to the ship without fault on their part.

This question was re-argued to the court on the exceptions to the Commissioner's report, and counsel for appellee in an attempt to defeat the operation of the statute, raised, for the first time, the objection that appellee was never discharged. There is no evidence to support this contention, and the allegations of the libel as we have already seen, are that

> "he was unable to continue in the service of said ship,"

which words are open to no other construction than that his employment did not continue thereafter.

Notwithstanding the said allegations in the libel, and the absolute lack of evidence that appellee was or was not discharged, the court sustained the contention of appellee upon the theory that he was entitled to his wages when discharged, and there being no evidence of any payment of wages to him, he was not discharged (Opinion of Judge Neterer, Record, pp. 69-73 inc., 210 Fed. 898).

Similarly, it might be argued that if the law required the collection of fare from a passenger before he boarded a train, and there was no evidence that his fare had been collected, it follows that he could not be on the train.

There is nothing in the case to support any such arguments on the part of counsel, and nothing to take the case out of the operation of the statute.

ASSIGNMENTS OF ERROR III, IV, V and VI, involve the right of appellee to recover in this action on the pleadings, law and evidence. The

pleadings have already been considered in the previous discussion.

The undisputed evidence shows that appellee brought a quantity of liquor on board, in clear violation of the shipping articles. He admits bringing a case of whiskey aboard, which was taken away from him by the captain (Record, p. 41). The latter testified that appellee brought a five gallon keg and a case of whiskey aboard (Record, p. 47). Here, therefore, was a clear breach of the express terms of the shipping articles, a certified copy of which was introduced in evidence (Exhibit A, Record, p. 89).

Appellee failed to conduct himself in a careful and sober manner. The testimony discloses that appellee's condition on the day of alleged accident was not as claimed by him. He testified under oath that the first drink that he took that day was after he had been sent ashore after the accident (Record, pp. 37, 41). He produced several witnesses to show that he was sober—two of whom were on the dock and saw the brig towed out to the anchorage. It is interesting to note that one of these disinterested personal friends was a bartender (Record, p. 21). Some of appellee's own witnesses contradicted his statement. Lillico, the launch man, who brought him ashore, thought he might have had a drink or two (Record, p. 29). (Note: This was before appellee had taken his first drink, according to his testimony.) The doctor noticed the odor of liquor at 9:30 or 10:00 p. m., six hours after he took that

single bracer after the accident (Record, p. 59). There was no doubt in the minds of the captain and the mate but that the man had been drinking hard and was under the influence of liquor when the accident is alleged to have happened. Captain McInnis testified that the cook was drunk when the brig was towed away from the dock, and that no meal was served by him at noon (Record, pp. 46, 48.) A. McDonald, the mate, testified that the cook had been drinking all day, was drunk that afternoon, and that no noon meal was served (Record, pp. 49, 50). This is corroborated by the testimony of the seaman, A. Walters (Record, p. 52).

Finally, we have the entry on page 12 of the official log book, which was made at the time of the accident, and is signed by the mate and three seamen; this was read into the record and is as follows:

> "Hauled out from pier 7 in tow of the tug Mystic. As the vessel was clear of the wharf, J. J. Wilson, the ship's cook fell on deck and claimed to be hurt seriously. He was sent on shore to the hospital at his own request at the time he fell he was drunk.
>
> Witnesses Alex McDonald, mate
> James Muir, seaman
> —— Downie, seaman
> A. Walters, seaman."

(Record, p. 54).

From the foregoing, we fail to see how there is any escape from the conclusion that appellee had

indulged his taste for alcohol to such an extent that he was under its influence, and was unable to conduct himself in a careful and sober manner at the time of the alleged accident. This constitutes a second breach of the express terms of the agreement, and we submit that the discharge in this case was fully justified under the circumstances and the express conditions of the shipping articles.

THE GARNET (District Court of California), 10 Fed. Cas. No. 5244, involved a very similar state of facts. The libelant, first mate, shipped on Friday, April 2nd, on which day the vessel was hauled out into the stream. He was discharged on Monday, April 5th, because of his conduct on Saturday in being intoxicated and unfit for duty. It was held that the discharge was justified.

> "* * * That there is an important distinction between a discharge in the home port before the voyage has commenced, and one afterward in a foreign port, before the termination of the voyage, is, I think, perfectly plain to every mind. Clearly, when it appeared that a mariner, after weeks or months of faithful service, had been discharged and his wages claimed to be forfeited, the courts would require proof of more aggravated misconduct than when the seaman had been discharged in his home port before the voyage had begun. But in this case the misconduct happened on the day after the libellant shipped, before the voyage had begun, and before two days' wages had been

earned. True, the contract had been made and the master was bound to fulfill it, unless the misconduct of the mate was such, as under the circumstances, justified the master in discharging him. * * * What is said in the cases tending to establish the doctrine that a seaman ought not to be discharged for one act of drunkenness, disobedience or neglect of duty, it seems to me is not applicable to the case at bar. In those cases the seaman had been discharged in a foreign port after long and generally faithful service, and the language of the courts should be read in the light of the facts of the case in which it was used. The present is very different from such cases."

The Garnet, 10 Fed. Cs., No. 5244, p. 12.

The rule is more liberal in allowing the discharge of cooks than in the case of seamen:

"Although the cook and steward are authorized to sue in the admiralty court, as mariners and part of the crew, yet I have distinguished their cases, as their duties are distinct from those mariners employed in navigating the ship. If the cook or steward is found incapable, from dishonesty, drunkenness, extreme filthiness, gross ignorance or negligence, to perform their duty, I have often ratified their dismission, with more latitude than that of mariners who may know and do their duty, though guilty of temporary aberrations; and I have not deemed the master so rigidly bound to receive them

though he may consent to the re-acceptance of their services."

Black v. The Louisiana, 3 Fed. Cs. No. 1461, p. 503.

The case of RAYMOND v. THE ELLA S. THAYER, 40 Fed. 902 (District Court of California) involved a claim of a seaman for wages for the entire voyage and expenses of his cure, where he was put ashore and sent to the Marine Hospital at his own solicitation. These are substantially the facts in the case at bar, except that appellee was taken to a private hospital instead of to the United States Marine Hospital. It appears from the evidence, particularly the log book entry (Record, p. 54), that he was taken ashore at his own solicitation and *this was never denied.*

We quote from the opinion in the above case (p. 903):

"* * * A seaman injured in the ship's service is undobutedly entitled to be cared for at the ship's expense, and to his wages until the end of the voyage. But he cannot claim wages to the end of the voyage when he has obtained his discharge at his own solicitation, and against the advice and even the expostulations of the master.

* * * I know of no case where a disabled seaman, discharged in an American port, and at his own urgent solicitation, in order that he might be admitted to a United States marine hospital, has been allowed subsequent wages.

> * * * But that a discharge in an American port, insisted on by the man, in order that he might go to a United States marine hospital, and reluctantly granted by the master, is a bar to a claim for wages until the end of the voyage, cannot, I think, be doubted."

In JOHNSON v. BLANCHARD, 7 Fed. 597, the libelant was denied wages for the whole voyage, it appearing that he had been left behind through his own negligence, having overstayed his shore leave.

We have examined carefully a number of cases cited by counsel for libelant, and have also made an exhaustive search for authorities which might, in any way, affect this question, but have found no decisions in which an exactly similar state of facts was involved, and the question is certainly a new one in this Circuit. The cases cited by counsel are not in point. A general rule of law could be deduced from them as follows: that where a seaman is injured during the voyage without fault on his part, he is entitled to his wages and expense of cure to the termination of the voyage; but in none of the cases are found the elements of discharge at his own solicitation, or intoxication, and the further fact that the alleged injury took place before the voyage was commenced, as in the case at bar.

Appellant's contention that the voyage had not yet commenced, is supported by "The Garnet" (Cal.), 10 Fed. Cs. No. 5244, which has already been quoted. In both cases, the discharge took

place two days after the articles had been signed, during which time the vessels were hauled out into the stream. The language of the court, in "The Garnet" (p. 12):

> "* * * in this case the misconduct happened on the day after the libellant shipped, before the voyage had begun, and before two days' wages had been earned.",

exactly covers the facts in the case at bar.

In HIGHLAND v. HARRIET C. KERLIN, 41 Fed. 222, the W. L. WHITE, 25 Fed. 503, and OLSON v. WHITNEY, 109 Fed. 80 (relied upon by appellee), were involved claims for wages and cure where the seaman was injured during the voyage. In these cases, the injured seamen either continued with the ship to the end of the voyage or were put ashore during the voyage; and it also appears that the injuries received were without fault on the part of the various libelants.

The ROBERT C. McQUILLEN, 91 Fed. 688, announces the rule that a seaman injured or taken sick in the service of the ship, and left in a foreign port without his consent, is entitled to full wages to the end of the voyage, or until restored to health. (Note: Libelant in that case was injured while homeward bound.)

The BUNKER HILL, 198 Fed. 587, involved a claim for damages because of appendicitis alleged to have been contracted through a fall during the voyage. Having received his wages and cure, the libel was dismissed.

PETERSON v. CHANDOS, 4 Fed. 645, involved no claim for wages, but for $5,000.00 damages because of a broken leg during the voyage, which it was alleged the Captain failed to treat in a skillful manner.

In the CENTENNIAL, 10 Fed. 397, wages were allowed to seamen injured during the voyage by neglect of officers.

The authorities which have been previously cited to sustain the position of appellant are much nearer to the proposition than anything produced by appellee.

CONCLUSION.

There is a principle involved in this case far more important than any financial benefits which might accrue from the reversal of this appeal. To sustain the judgment of the District Court, would mean the approval of a doctrine entirely new, extremely unfair, and one which would open the gateway to an immense amount of fraud to be perpetrated against ship-owners during the annual sailing for Alaska and elsewhere; and there would be practically no defense to such actions when instituted. We have no quarrel with authorities which require the care of a seaman injured during the voyage, but we most earnestly protest against any application of this doctrine which will permit a seaman, and especially a sea-cook, to go ashore at his own request before the ship leaves the harbor, when as he himself alleges, he was unable to continue in the service of the ship, and less than a month thereafter allow

him to recover wages for the whole voyage whether it last six months or three years. Whether drunk or sober, sick or well, no such cause of action should arise in his favor under these circumstances, and it is a strained and unwarranted interpretation of the law, eminently unfair and without justice to the ship-owner, to sustain the decree of the District Court.

We submit that the decree appealed from should be reversed and that a decree be entered in favor of appellant.

Respectfully submitted,

CHARLES W. DORR,
HIRAM E. HADLEY,
CLYDE M. HADLEY,
FREDERICK W. DORR,
Proctors for Appellant.

Address:
375 Colman Building,
Seattle, Wash.

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

MANHATTAN CANNING COMPANY, a Corporation, Appellant, vs. J. W. WILSON, Appellee.	No. 2377

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON.

Hon. Jeremiah Neterer, District Judge.

BRIEF OF APPELLEE

POINTS AND AUTHORITIES.

The first point relied upon by appellant is that the case must be controlled by the provisions of Section 4527 of the Revised Statutes, re-enacted by the act of August 18, 1890 (6 Fed. Statutes Annotated, page 851). It seems clear to proctor for appellee that this contention is utterly without foundation. This legislation does not purport to take from mariners, being injured or sick, their ancient remedy of

wages, maintenance and cure. It is plain that Congress in passing this Act intended to protect seamen from being employed on a voyage and then capriciously discharged. The case of the W. L. WHITE, 25 Fed. 503, makes this very clear. In that case a seaman had shipped from New York to Havana and back, and at Havana, in the service of the ship, received a hurt and was sent to the hospital. Upon the application of the master, the U. S. Consul discharged libelant, receiving wages up to date and one month's extra wages. The consul applied this fund to the payment of the mariner's hospital bill and voyage home. The mariner thereafter libeled the vessel for his wages to the end of the voyage and was permitted to recover, the court holding that the ship was bound to pay the expenses of his cure, and that the collection of one month's extra wages, as required by the statute regulating the discharge of seamen by consuls in foreign ports did not bar his rights to all wages during the voyage and maintenance and cure.

The "CHAS. D. LANE," 106 Fed 746, and the "J. D. PETERS," 78 Fed. 368, clearly show the error of the position of the appellant.

The "STAGHOUND" and the "GAMECOCK," 97 Fed. 973, cited by appellant, when carefully read, sustains the position of appellee; namely, that section 4527 covers the giving or breaking up of the voyage or the capricious discharge of the seaman.

Furthermore, there is absolutely no evidence of discharge in this case. The libelant in his testimony (Record 35-36) says that as soon as he received his injury the mate, McDonald, directed the boatswain, acting as second mate, to take the libelant ashore; and that he was accordingly taken to the Providence Hospital by that officer. This is undisputed. There was no discharge. The law requires that coastwise seamen, when shipping before a Commissioner must be discharged before such commissioner.

The "J. D. PETERS," 78 Fed. 368.

In their second point, proctors for appellant challenge the right of the appellee to recover in this action on the pleadings, law and evidence.

The contention is made that the voyage had not begun at the time when the appellee received his injury. The undisputed fact is, that the vessel was fully loaded, with a part of her crew aboard, and that at the exact time of the injury she was being hauled out to a buoy in the harbor by a tug engaged for that purpose. The appellee had signed on and begun work April 21st and received his injury on the 23rd. Under these circumstances the voyage had begun.

Carver on "Carriage by Sea," Sec. 148;
BOWEN vs. HOPE INS. CO., 37 Mass. 275, 32 Amer. Dec. 213.
SUN MUTUAL INS. C. vs. MISSISSIPPI VALLEY TRANS. CO., 17 Fed. 919.

The contention is also made that the libelant at the time of receiving his injury was drunk. The clear weight of the testimony refutes this contention. C. C. Young (Rec. 21), A. Antenose (Rec. 22), J. D. McDonald (Rec. 24-25), Matthew Murray (Rec. 26), Roy Lillico (Rec. 27), M. L. Kenyon (Rec. 32), and the libelant (Rec. 34-37) all show plainly that the appellee was sober and was not drunk. All of these witnesses except appellee are disinterested, and the Commissioner who heard every one of them testify, found for the appellee upon this question of fact, and it is submitted that no showing is made on behalf of appellant which would justify this Court in reversing the finding of the Commissioner. The little testimony upon this subject, to the effect that the appellee was intoxicated, is plainly an afterthought. The testimony of the master (Rec. 43 et seq.) is that he was not aboard at the time of the accident and at page 47 testifies that the cook brought aboard a quantity of liquor, and that he took it away from him and stowed it away.

McDonald, the mate, says that he did not pay any attention to the cook on that day until he was hurt (Rec. 50). Walters (Rec. 53) says that the cook's condition did not attract his attention until after he was injured.

The further point is made that the appellee brought liquor aboard in violation of the shipping articles. It is not contended, however, that the appellee got any of this liquor or had any opportunity

to drink it. It is a singular fact that the master was there to receive the liquor and stow it away when brought on board by the appellee. It does not appear either that the master even went so far as to reprimand the appellee for bringing it aboard. This bears out appellee's testimony that the liquor was brought on in pursuance of an understanding with the master (Rec. 41).

We submit that nothing has been shown to take this case out of the established rule that a sailor injured in the service of his ship is entitled to receive his wages to the end of the voyage, his maintenance and the expense of his cure.

The "W. L. WHITE," 25 Fed. 503;
PETERSON vs. the "CHANDOS," 4 Fed. 645;
HIGHLAND vs. "HARRIET C. KERLIN," 41 Fed. 222;
OLESEN vs. WHITNEY, 109 Fed. 80;
"THE TROOP," 118 Fed. 769;
The "ROBERT C. McQUILLEN," 91 Fed. 688.

The alleged drunkenness must be such as to have brought about the injury of the libelant or must positively disqualify him to perform his duties.

The "VILLA Y. HERMAN," 101 Fed. 132.

By reason of poverty the appellee was not able to take a cross appeal from that portion of the decree disallowing, or failing to allow, the appellee his costs of maintenance.

We submit that this appeal is a trial of the action de novo, and that this Court has full jurisdiction upon this general appeal to grant the appellee further relief.

The "SARATOGA," Fed. Cases, No. 12, 356;
The "HESPER," 122 U. S. 256;
PETTIE vs. BOSTON TOWBOAT CO., 49 Fed. 464.

This being so, we submit that under the evidence in this cause (Rec. 37-38) this Court should increase the allowance to the appellee by the sum of at least $1.50 per day from the time when he left the hospital until October 5th—$240.00.

It is respectfully submitted that this appellee was left destitute in the City of Seattle, and is still unable to work, and his maintenance should be allowed him.

While not undertaking to suggest the action of this Court, proctor for the appellee earnestly requests early consideration of this case, if not incompatible with the engagements of the Court, owing to the destitute condition of the appellee.

The supposed hardships conjured up by proctors for appellant in their brief will not be considered by this Court. The statements of counsel in their brief might very well be urged before a congressional committee having in charge a bill for changing the admiralty law. This Court, however, will not modify or change the law, or make new law, but will administer the admiralty law as it has

been established since the earliest times, giving to an injured seaman his wages, his maintenance and the expense of his cure. The decree of the trial court is clearly correct and should be in all things affirmed except to modify it to include maintenance for appellee.

Respectfully submitted,

JAMES KIEFER,
Proctor for Appellee.